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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1902

Supervised Bank Accounts

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; correction.

SUMMARY: The Farmers Home Administration (FmHA) corrects a final rule published January 6, 1988 (53 FR 231). In the amendment for § 1902.7(f), pledging collateral for deposit of funds in supervised bank accounts, the address for the Department of Treasury, FMS Funds Flow Division, Collateral Section was given as, Room 802, Premier Bldg., Treasury Annex, Washington, DC 20226. This is incorrect. Therefore the last sentence of this paragraph is amended to correct this address and clarify the paragraph.

EFFECTIVE DATE: June 29, 1988.

FOR FURTHER INFORMATION CONTACT: Ed Douglas, Debt Management Specialist, Financial and Management Analysis Staff, Financial Analysis Branch, Farmers Home Administration, USDA, Room 5507, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250, telephone: (202) 475–4425.

PART 1902—SUPERVISED BANK ACCOUNT

1. The authority citation for Part 1902 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Loan and Grant Disbursement

2. § 1902.7(f) is amended by correcting the last sentence to read as follows:

§ 1902.7 Pledging collateral for deposit of funds in supervised bank accounts.

* * * * *

(f) * * * Upon receipt of this written request, the FmHA office will send that request to the Department of Treasury, FMS Fund Flows Division, Collateral Section, 4th Floor, Liberty Loan Bldg., 401 14th St. SW., Washington, DC 20227.

Date: June 7, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–14592 Filed 6–28–88; 8:45 am]

BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. 88–111]

Horse Protection Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our interim rules that amended the Horse Protection Regulations regarding pads, action devices, weights, and boots used on horses. This extension will provide interested persons with additional time in which to prepare comments on the interim rules.

DATES: Consideration will be given only to written comments on Docket No. 88–052 and Docket No. 88–079 that are postmarked or received on or before July 15, 1988.

ADDRESSES: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090–6464. Please state that your comments refer to either Docket No. 88–052 or Docket No. 88–079. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7833.

SUPPLEMENTARY INFORMATION: On April 26, 1988, we published in the **Federal Register** (53 FR 14778–14782) an interim rule that amended the Horse Protection Regulations by expanding the list of devices and equipment prohibited for use on any horse at any horse show, exhibition, sale, or auction. Additionally, the interim rule prohibited the use on any horse of weights other than horseshoes, and of horseshoes weighing more than 16 ounces each. The interim rule also clarified which horses are subject to the scar rule.

On May 2, 1988, we published in the **Federal Register** (53 FR 15640–15641) an interim rule that removed certain restrictions on weights, horseshoes, and boots imposed by the April 26 interim rule, and that reinstated certain restrictions on the placement of lead and other weights on horses. Comments on both the April 26 and the May 2 interim rules were required to be postmarked or received on or before June 27, 1988.

Shortly before the comment periods closed, we received a request to extend the comment periods on the interim rules until July 15, 1988. In response, we are reopening and extending the comment periods on Docket No. 88–052 and Docket No. 88–079, so that we may consider all written comments postmarked or received on or before July 15, 1988. This action will allow the requestor and all other interested persons additional time to prepare comments.

Done in Washington, DC, this 24th day of June, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–14660 Filed 6–28–88; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 374 and 375

[Docket No. 80484–8084]

Exports to India; Amendments to the Export Administration Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On March 26, 1986 (51 FR 10365) the Bureau of Export Administration published a final rule that required license applications and reexport authorization requests for national security controlled commodities to be accompanied by a certified copy of the Indian Import License.

The Bureau of Export Administration is amending that rule consistent with a U.S. Government/Government of India (GOI) agreement to replace the Indian Import License with an Indian Import Certificate. Four GOI agencies have the authority, with the Embassy of India in Washington, DC, to issue the Indian Certificate to the importer. The type of commodity to be imported and the nature of the ultimate consignee will determine which of the four GOI agencies will have authority to issue the Import Certificate.

This rule also adds Switzerland and Yugoslavia to the authorities administering Import Certificate/Delivery Verification systems in foreign countries in Supplement No. 1 to Part 375.

EFFECTIVE DATE: This rule is effective June 29, 1988.

FOR FURTHER INFORMATION CONTACT: Karin Berry, Country Policy, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377–4531.

SUPPLEMENTARY INFORMATION:

Grace Period

The requirement for submitting an Indian Import Certificate with export license applications will take effect on August 15, 1988. Before that date, applications will be accepted if supported by a Form ITA–629P. However, applications already pending and those submitted before August 15, 1988, will receive more expeditious handling if an Indian Import Certificate is submitted.

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule involves collections of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0625–0001 and 0625–0136.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a), exempts this rule from all requirements of section 553 of the Administrative Procedures Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because it does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Patricia Muldonian, Regulations Branch, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

5. This rule does not contain policies with Federalism implication sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Parts 374 and 375

Exports, Reporting and recordkeeping requirements.

Accordingly, 15 CFR Parts 374 and 375 of the Export Administration Regulations are amended as follows:

PARTS 374 AND 375—[AMENDED]

1. The authority citations for 15 CFR Parts 374 and 375 continue to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

§ 374.3 [Amended]

2. In § 374.3(c)(1)(ii) the phrase "Indian Import License" is revised to read "Indian Import Certificate". (2 revisions).

§ 375.1 [Amended]

3. The chart in § 375.1 is amended by revising the entry under the third column "Indian Import License" to read "Indian Import Certificate".

§ 375.2 [Amended]

4. In § 375.2(b)(1) the phrase "Indian Import License" is revised to read "Indian Import Certificate".

§ 375.3 [Amended]

5. In § 375.3(b), footnote No. 1, the phrase "Indian Import License" is revised to read "Indian Import Certificate".

6. In § 375.7, the section title and paragraph (a) are revised as set forth below; paragraphs (b)(1), (b)(3), (b)(4), and (c) are amended by revising the phrase "Indian Import License" to read "Indian Import Certificate"; and paragraphs (b)(1), (b)(2) and (d) are amended by revising the phrase "Import License" to read "Import Certificate", wherever it appears.

§ 375.7 Indian Import Certificate.

(a) *Requirement.* A license application to export to reexport commodities to India, regardless of consignee, generally, must be accompanied by an original Government of India (GOI) Indian Import Certificate. The Import Certificate, inter alia, places certain obligations on the Indian importer against reexport or transfer of commodities. The Import Certificate requirement applies to all commodities identified by the code letter "A" on the Commodity Control List (CCL) and to those commodities identified by the code letter "B" that include "national security" in the *Reason for Control* paragraph of the CCL entry. Four GOI agencies have the authority to issue the Indian Import Certificate. The Indian importer is responsible for determining the appropriate GOI issuing agency. The issuing agencies include:

(1) For small scale industries and entities, and those not elsewhere specified, Office of Chief Controller of Imports and Exports;

(2) For the "organized" sector, except for computers and related equipment, Directorate General of Technical Development;

(3) For Defense organizations, Ministry of Defense; and

(4) For computers and related electronic items, Department of Electronics.

In addition, any of the agencies listed above may instruct the Embassy of India in Washington, DC, to issue the Import Certificate on its behalf. The U.S. exporter and, where appropriate the reexporter, should: tell the Indian customer that the GOI Import Certificate is required documentation when applying for a U.S. export license or reexport authorization and limit the customer's request to those commodities subject to this Import Certificate procedure, *i.e.*, commodities under national security control. The exporter should clearly state which commodities are covered. For example, where the Indian order is for a variety of commodities (some requiring an Import Certificate under this procedure, some requiring a Consignee/Purchaser Statement, and some exportable under general license G–DEST), the request for the certified copy of the Indian Import Certificate should be limited to cover those commodities that are subject to the Import Certificate requirement, as described above. Where the Import Certificate includes commodities for which more than one license application will be submitted, the Import Certificate must be attached to the first such application. Each subsequent application must include the following certification in the space entitled "Additional Information" or on an attachment:

I (We) certify that the quantities of commodities shown on all export licenses based on Indian Import Certificate No. _____ when added to the quantities shown on all additional applications pending in the Office of Export Licensing based on the same Import Certificate, including the present application and any license already issued, do not total more than the quantities shown on the Import Certificate. This Import Certificate was submitted in support of application number _____ (insert case number, or, if case number is unknown, the applicant's reference number, date of submission of application to which the Indian Import Certificate was attached, and the Export Control Commodity Number and Processing Code shown on that application).

* * * * *

§ 375.9 [Amended]

7. Section 375.9 is amended by revising the phrase "Indian Import Licenses" to read "Indian Import Certificates" in the introductory paragraph, paragraph (a), and the title of (b)(3).

8. Section 375.9 is amended by revising the phrase "Indian Import License" to read "Indian Import Certificate" in paragraphs (b)(3), (c), (e) introductory text, (f) and (g)(1).

9. Section 375.9 is amended by removing the phrase "(hereinafter referred to as Certificate)" from paragraph (e).

10. Supplement No. 1 to Part 375 is amended by adding a new entry for India after the entry for "Hong Kong"; adding a new entry for "Switzerland" after the entry for "Spain"; and by adding a new entry for "Yugoslavia" after the entry for "United Kingdom", as follows:

SUPPLEMENT NO. 1—AUTHORITIES ADMINISTERING IMPORT CERTIFICATE/DELIVERY VERIFICATION SYSTEM IN FOREIGN COUNTRIES [1]

Country	IC/DV authorities	System administered [2]
*	* * * *	*
India	For small scale industries and entities, and those not elsewhere specified: Deputy Chief Controller of Imports and Exports, Udyog Bhawan, Maulana Azad Road New Delhi—110011.	Indian Import Certificate.
	For the "organized" sector, except for computers and related equipment: Directorate General of Technical Development, Udyog Bhawan, Maulana Azad Road, New Delhi—110011.	Indian Import Certificate.
	For Defense organizations: Defense Research and Development Organization, Room No. 224, "B" Wing Sena Bhawan, New Delhi—110011.	Indian Import Certificate.
	For computers and related electronic items: Department of Electronics, Lok Nayak Bhawan, New Delhi—110003.	Indian Import Certificate.
	On behalf of any of the above: Assistant Director, Embassy of India, Commerce Wing, 2536 Massachusetts Ave NW., Washington, DC 20008.	Indian Import Certificate.

SUPPLEMENT NO. 1—AUTHORITIES ADMINISTERING IMPORT CERTIFICATE/DELIVERY VERIFICATION SYSTEM IN FOREIGN COUNTRIES [1]—Continued

Country	IC/DV authorities	System administered [2]
*	* * * *	*
Switzerland	Swiss Federal Department of Public Economy, Import and Export Division, Zieglerstrasse 30 CH-3003 Bern.	Swiss Blue Import Certificate.
*	* * * *	*
Yugoslavia	Yugoslav Chamber of Economy, Knez Mihailova 10, Belgrade.	Yugoslav End-Use Certificate.
*	* * * *	*

[1] Facsimiles of Import Certificates and Delivery Verifications issued by each of these countries may be inspected at the Bureau of Export Administration Western Regional Office, 3300 Irvine Avenue, Suite 345, Newport Beach, California 92660–3198 or at any U.S. Department of Commerce District Office (see list on page (ii) under District Office Addresses) or at the Office of Export Licensing, Room 1099D, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

[2] IC—Import Certificate and/or DV—Delivery Verification.

Dated: June 20, 1988.

Vincent F. DeCain

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88–14124 Filed 6–28–88; 8:45 am]

BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C–3231]

Medical Staff of Memorial Medical Center; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the medical staff of a Savannah, Ga. medical center from denying, restricting, or recommending denial or restriction of hospital privileges for any nurse-midwife, unless the staff has a reasonable basis for believing that such restriction serves the interest of the hospital in providing health care services. Respondent will also be prohibited from refusing to deal with or coercing the hospital or any person, organization, or institution, if the

purpose or effect is to restrict the practice of nurse-midwifery.

DATE: Complaint and order issued June 1, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Harold Kirtz, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, IL 60603. (312) 353–4423.

SUPPLEMENTARY INFORMATION: On Thursday, January 28, 1988, there was published in the **Federal Register**, 53 FR 2508, a proposed consent agreement with analysis In the Matter of Medical Staff of Memorial Medical Center, an unincorporated association, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing And Intimidating: § 13.345 *Competitors*. Subpart—Combining Or Conspiring: § 13.384 Combining or conspiring; § 13.390 *To control employment practice*; § 13.405 *To discriminate unfairly or restrictively in general*; § 13.470 *To restrain and monopolize trade*. Subpart—Corrective Actions And/Or Requirements: § 13.533 *Corrective actions and/or requirements*; § 13.533–20 *Disclosures*; § 13.533–45 *Maintain records*; § 13.533–45(e) *Correspondence*; § 13.533–50 *Maintain means of communication*; § 13.533–60 *Release of general, specific, or contractual constrictions, requirements, or restraints.*

List of Subjects in 16 CFR Part 13

Medical staff, Nurse-midwife, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88–14586 Filed 6–28–88; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 101

Agency Rule Implementing the Law Governing Selection of Court for Multiple Appeals

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board (NLRB) amends its Statements of Procedure, § 101.14, as required by Pub. L. 100–236, which was enacted to provide for the selection of the court of appeals to decide multiple appeals of an agency order. The statute obligates the Agency to designate an officer and office to receive petitions to review Agency orders that are filed with the courts of appeals.

EFFECTIVE DATE: July 6, 1988.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue NW., Room 701, Washington, DC 20570, Telephone: (202) 254–9430.

SUPPLEMENTARY INFORMATION: Public Law 100–236 was enacted to provide a procedure for selection of an appropriate court of appeals to review an agency order when multiple appeals to that order are filed with more than one court of appeals. Formerly, the practice of selecting the "court of venue" when an appeal was filed in more than one circuit was determined by the circuit where the appeal of the agency order was first filed. The "first to file" rule, however, gave rise to "races to the courthouse" in order to file in a circuit which a lawyer believed would be sympathetic to the client's position. (H.R. Rep. No. 100–72 at 1–2 (1987)).

In order to alleviate the need for a circuit race when multiple appeals are filed, Pub. L. 100–236 establishes a procedure for a random selection of a circuit from among those circuits in which petitions are filed. In order to qualify for participation in the random selection process, a person must file a petition for review of the agency order and submit a copy of the petition to the agency within ten days of issuance of the order. The statute requires agencies to designate by rule an office and officer to receive the petition for review. Therefore, the National Labor Relations Board is amending its Statements of Procedure, 29 CFR 101.14, to provide that its Deputy Associate General Counsel of the Appellate Court Branch will receive petitions for court review of Agency orders.

List of Subjects in 29 CFR Part 101

Administrative practice and procedure, Labor management relations.

Accordingly, 29 CFR Part 101 is amended as follows:

PART 101—STATEMENTS OF PROCEDURE

1. The authority citation for 29 CFR Part 101 is revised as follows:

Authority: Sec. 6 of the National Labor Relations Act, as amended (29 U.S.C. 151, 156), and sec. 552(a) of the Administrative Procedure Act (5 U.S.C. 552(a)). Section 101.14 also issued under sec. 2112(a)(1) of Pub. L. 100–236, 28 U.S.C. 2112(a)(1).

2. Section 101.14 is revised to read as follows:

§ 101.14 Judicial review of Board decision and order.

If the respondent does not comply with the Board's order, or th Board deems it desirable to implement the order with a court judgment, the Board may petition the appropriate Federal court for enforcement. Or, the respondent or any person aggrieved by a final order of the Board may petition the circuit court of appeals to review and set aside the Board's order. If a petition for review is filed, the respondent or aggrieved person must ensure that the Board receives, by service upon its Deputy Associate General Counsel of the Appellate Court Branch, a court-stamped copy of the petition with the date of filing. Upon such review or enforcement proceedings, the court reviews the record and the Board's findings and order and sustains them if they are in accordance with the requirements of law. The court may enforce, modify, or set aside in whole or in part the Board's findings and order, or it may remand the case to the Board for further proceedings as directed by the court. Following the court's judgment, either the Government or the private party may petition the Supreme Court for review upon writ of certiorari. Such applications for review to the Supreme Court are handled by the Board through the Solicitor General of the United States.

Dated, Washington, DC, June 23, 1988.

By direction of the Board.

National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 88–14585 Filed 6–28–88; 8:45 am]

BILLING CODE 7545–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 352

[DoD Directive 5118.3]

Comptroller of the Department of Defense

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This part revises 32 CFR Part 352 to identify the Comptroller of the Department of Defense and delineates its responsibilities, functions, relationships, and authorities pursuant to the authority vested in the Secretary of Defense under 10 U.S.C. sections 136 and 137. Because of a new realignment of responsibilities within the Office of the Secretary, this part identifies the authorities and responsibilities of the Comptroller of the Department of Defense.

EFFECTIVE DATE: May 24, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. H. Becker, Office of the Director of Administration and Management, the Pentagon, Washington, DC 20301, telephone (202) 695-4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 352

Organization and function.

Accordingly, 32 CFR Part 352 is revised to read as follows:

PART 352—COMPTROLLER OF THE DEPARTMENT OF DEFENSE

Authority: 10 U.S.C. 136 and 137.

§ 352.1 Purpose.

This part:

(a) Implements 10 U.S.C. that establishes the position of Comptroller of the Department of Defense.

(b) Designates the Comptroller of the Department of Defense as an Assistant Secretary of Defense and assigns the responsibilities, functions, relationships, and authorities prescribed herein, pursuant to the authority vested in the Secretary of Defense under 10 U.S.C. sections 136 and 137.

§ 352.2 Definition.

DoD Components. The Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities.

§ 352.3 Responsibilities.

The *Comptroller of the Department of Defense* is the principal advisor and assistant to the Secretary of Defense for budgetary and fiscal matters (including financial management, accounting policy and systems, budget formulation and execution, and contract audit), information resources management, and general management improvement programs. The Comptroller is the Chief Financial Officer of the Department of Defense and also serves as the Senior Official for Information Resources Management.

§ 352.4 Functions.

In carrying out the responsibilities assigned in § 352.3, the Comptroller shall:

(a) Develop and administer the planning, programming, and budgeting system (PPBS) of the Department of Defense.

(b) Supervise and direct the forumlation and presentation of Defense budgets, interactions with the Congress on budgetary and fiscal matters, and the execution and control of approved budgets in a manner that provides an authoritative decision-making system for the allocation of resources within the Defense budget and maintains effective financial control and accountability over the use of these resources.

(c) Establish and supervise the execution of uniform DoD policies, principles, and procedures (including terminologies and classifications, as necessary) for:

(1) Budget formulation and execution; financial management programs and systems; accounting and disbursing systems; cash and credit management; debt collection; financial progress and statistical reporting; and technical, organizational, and administrative matters related to contract audit.

(2) Relationships with financial institutions, including those operating on DoD installations in the United States and overseas.

(3) International financial matters, including the adequacy of international financial agreements.

(4) Professional development of comptroller and financial management personnel.

(5) Prices for transactions involving the provision of goods and services by DoD Components, including sales to foreign governments.

(6) Managing, developing, and using general purpose information technology, including automated information systems, office automation, and microcomputer systems.

(7) Information management, including control of information requirements, records management, use of statistical data, and information processing and data element standards.

(8) Contractor cost and schedule performance measurement systems and related reports.

(9) Acquisition status reporting systems, including Selected Acquisition Reports and Unit Cost Reports.

(10) Access to DoD budgetary material and other records by the General Accounting Office.

(d) Provide for the design, development, and installation of management improvement programs and systems throughout the Department of Defense by:

(1) Developing the Department's management agenda, establishing DoD-wide goals, and identifying major issues to be resolved.

(2) Ensuring that mechanisms are in place that permit senior management to identify and focus on significant problem areas.

(3) Developing an annual management improvement plan and coordinating plans for high priority management improvement efforts.

(4) Establishing and maintaining an internal management control program to control waste, fraud, and mismanagement.

(e) Provide computer services and associated support to OSD and other assigned activities, to include: validation of automated data processing (ADP) requirements, management and control of ADP resources, systems development and operation, and the provision of consulting services.

§ 352.5 Relationships.

(a) In the performance of the above functions, the Comptroller of the Department of Defense shall:

(1) Exercise direction, authority, and control over the Defense Contract Audit Agency.

(2) Provide policy guidance, priorities and objectives, and management supervision for the Defense Automation Resources Office.

(3) Coordinate and exchange information with other DoD Components having collateral or related functions.

(4) Promote coordination, cooperation, and mutual understanding of matters pertaining to assigned functions within the Department of Defense and between

the Department of Defense, other Government Agencies, and the public.

(5) Serve on boards, committees, and other groups concerned with matters pertaining to assigned functions and represent the Secretary of Defense on assigned functions outside the Department of Defense.

(6) Maintain liaison with congressional budget oversight committees on all DoD budgetary and fiscal matters and serve as focal point for joint Office of Management and Budget/Office of the Secretary of Defense budget and management reviews.

(7) Use existing facilities and services, whenever practicable, to achieve maximum efficiency and economy.

(b) Directors of Defense Agencies and DoD Field Activities shall coordinate with the Comptroller of the Department of Defense in the development of critical elements and performance standards for the Comptroller (or equivalent) in their respective organizations.

(c) The Comptroller of the Department of Defense shall provide input to the performance evaluation of Comptrollers (or equivalents) of Defense Agencies and DoD Field Activities.

(d) The Comptroller of the Department of Defense shall be consulted as to professional qualifications of Defense Agency and DoD Field Activity Comptrollers (or equivalents) before their selection to such positions.

(e) All DoD Components shall coordinate with the Comptroller of the Department of Defense on all matters related to the functions in § 352.4.

§ 352.6 Authorities.

(a) The Comptroller of the Department of Defense is hereby delegated authority to:

(1) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1–M that implement policies approved by the Secretary of Defense in the functions assigned to the Comptroller of the Department of Defense. Instructions to the Military Departmernts shall be issued through the Secretaries of those Departments, or their designees. Instructions to Unified and Specified Commands shall be issued through the Chairman, Joint Chiefs of Staff (CJCS)

(2) Approve or withhold authority to obligate and expend funds authorized and appropriated by Congress for the execution of DoD programs.

(3) Obtain reports, information, advice, and assistance, consistent with DoD Directive 7750.5 in carrying out assigned functions, as necessary.

(4) Communicate directly with the heads of the DoD Components. Communications to the Commanders of Unified and Specified Commands shall be coordinated through the CJCS.

(5) Establish arrangements for DoD participation in those non-defense governmental programs for which the Comptroller of the Department of Defense has been assigned primary staff cognizance.

(6) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

(b) Other authorities specifically delegated by the Secretary of Defense are contained in enclosure 1.

§ 352.7 Effective date.

This part is effective May 24, 1988.

Appendix—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, the Comptroller of the Department of Defense is hereby delegated subject to the direction, authority, and control of the Secretary of Defense, authority to:

1. Approve requests to hold cash at personal risk for authorized purposes; including imprest funds, and to redelegate such authority as appropriate in the administration and control of DoD funds, consistent with provisions of the Treasury Financial Manual (TFM) and under the authority of Title 31, United States Code, section 3321 and 3342.

2. Approve DoD Component disbursing regulations developed to implement the TFM and to grant waivers when delegated by the Secretary of the Treasury to heads of Executive Departments and Agencies.

3. Approve the establishment of accounts for the individual operations financed by management funds and issue regulations for the administration of accounts thus established pursuant to the authority in Title 10, United States Code, section 2209.

4. Exercise the authority of the Secretary of Defense to establish reimbursement rates and prices for DoD goods and services.

5. Pursuant to the authority of sections 113 and 137 of Title 10, United States Code, make the determinations in order to effectuate transfers under transfer authorities enacted in DoD and military construction appropriation acts and make any reports or furnish notifications to the Congress or its committees in connection with the exercise of such transfers.

These authorities may be redelegated, as appropriate.

June 24, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 14617 Filed 6–28–88; 8:45 am]

BILLING CODE 3810–01–M

32 CFR Part 390a

[DoD Directive 5154.24]

Armed Forces Institute of Pathology (AFIP)

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This part is issued to incorporate changes to DoD Directive 5154.24, "Armed Forces Institute of Pathology (AFIP)," May 24, 1988, as requested by the Department of Defense Inspector General, the Assistant Secretary of Defense (Comptroller), and the Military Departments. This part delineates the functions and responsibilities of the AFIP.

EFFECTIVE DATE: May 24, 1988.

FOR FURTHER INFORMATION CONTACT: Capt. D. Uddin, Office of the Assistant Secretary of Defense (Health Affairs), Room 3D360, the Pentagon, Washington, DC 20301, telephone (202) 695–7117.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 390a

Organization and functions (Government agencies).

Accordingly Title 32, Chapter I, is amended to add Part 390a as follows:

PART 390a—ARMED FORCES INSTITUTE OF PATHOLOGY (AFIP)

Sec.

Authority: 10 U.S.C. 133.

§ 390a.1 Purpose.

This part is issued to update policy, assign responsibilities, and prescribe guidance for the administration and management of the AFIP.

§ 390a.2 Definition.

Administrative Support. Planning, programming, budgeting, and execution system (PPBES) functions. These include funding; fiscal control; manpower administration; administrative support for space, facilities, and supplies; and other administrative provisions and services with related mobilization planning.

§ 390a.3 Organization.

(a) AFIP shall be a joint entity of the three Military Departments and subject to the authority, direction, and control of the Secretary of Defense in accordance with 10 U.S.C. 176, 177, and 2601.

(b) The Assistant Secretary of Defense (Health Affairs) (ASD(HA)) shall be responsible for AFIP policy direction in accordance with 10 U.S.C. 176, 177, and 2601, and 32 CFR Part 367.

(c) The Secretary of the Army shall serve as the Executive Agent for AFIP in accordance with 10 U.S.C. 176, 177, and 2601.

(d) The AFIP shall have a Board of Governors; a Director; two Deputy Directors; a Scientific Advisory Board (SAB); and a staff of professional, technical, administrative, and clerical personnel.

(e) The Board of Governors shall consist of:

(1) The ASD(HA), who shall serve as the Chairman of the Board of Governors.

(2) The Assistant Secretary for Health of the Department of Health and Human Services; the Surgeons General of the Army, the Navy, and the Air Force; and the Chief Medical Director of the Veterans' Administration. These members are expected to attend Board meetings personally, but may be represented by their Deputies if unable to attend.

(3) A former Director of AFIP, designed by the Secretary of Defense.

(f) The Board of Governors shall be supported by an Executive Secretary who shall assist in the preparation and follow-up of Board activities, and shall be selected by the Chairman from individuals assigned to the ASD(HA) staff.

(g) The Director and Deputy Directors of AFIP shall be military medical officers who are selected on the basis of high professional qualifications in the field of pathology and demonstrated medical administrative ability.

(1) The Director shall be appointed by the Secretary of Defense from nominations received from the Board of Governors. The Director shall be appointed on a rotating basis among the Army, the Navy, and the Air Force for a period of 4 years, but the highest criteria for selection shall be the qualifications of the individual nominee.

(2) A Deputy Director shall be appointed from each of the Military Departments that are not represented by the Director.

(h) The Director and Deputy Directors shall be aided by a SAB that shall meet at least semiannually to provide peer review and guidance for the AFIP scientific program.

(i) If deemed appropriate and feasible, a Scientific Director may be appointed to assist the Director with the content and direction of the scientific mission.

(j) Other professional, technical, and clerical staff consisting of medical department officers and other military personnel of the Army, Navy, and Air Force; and civilian personnel, including consultants and experts, shall be made available to the Director.

§ 390a.4 Administration, funding, and staffing.

(a) The Secretary of the Army, as the Executive Agent, shall be responsible for determining and providing, within the limits of resources available to the Department of the Army for such purposes, adequate administrative support for operating the AFIP. The Secretary of the Army may redelegate Executive Agent responsibilities within the command structure of the Department of the Army.

(b) The AFIP Director shall present a proposed budget to the AFIP Board of Governors for review and to the ASD(HA) for approval. The budget then shall be forwarded by the Director to the Executive Agent for inclusion in the Army's PPBES process. The Army shall ensure that the AFIP budget is identified as a line item in the Army budget.

(c) The Director shall present proposed staffing requirements to the ASD(HA), via the Board of Governors, for review and approval. The approved requirements shall be incorporated in a Joint Staffing Document by the Executive Agent with appropriate participation of the other Services.

(1) Each Military Department shall provide, within its resource capabilities, the military manpower and personnel assistance necessary to accomplish the AFIP mission. Military manpower shall be prorated among the Military Departments in accordance with the Joint Manpower Document administrated by the Executive Agent.

(2) DoD civilian personnel and associated administrative support shall be provided by the Army as Executive Agent.

(3) Military members assigned to AFIP shall be responsible to the Director with respect to their performance of duty.

(d) SAB members shall be nominated by the Director, reviewed by the Board of Governors, and approved by the ASD(HA).

(1) Appointments to the SAB shall be made by the Secretary of the Army, in accordance with 32 CFR Part 224, for a term not to exceed 2 years.

(2) No member of the AFIP regular duty staff may be appointed as a member of the SAB.

§ 390a.5 Mission.

The AFIP mission shall be to:

(a) Serve as a national and international resource supporting both the military and civilian sectors of pathology.

(b) Serve as the chief reviewing authority on the diagnosis of pathologic tissues for the Armed Services.

(c) Conduct consultation, education, and research programs in medical, dental, and veterinary pathology.

(d) Maintain a comprehensive collection of pathologic specimens for reference, education, and research.

§ 390a.6 Functions.

(a) The AFIP functions shall be to:

(1) Provide a comprehensive consultation service for the evaluation of pathologic tissues and specimens for the Department of Defense, other Federal Agencies, and civilian pathologists. The scope and extent of consultation services shall support the basic AFIP mission. These shall be determined by a Joint Service Regulation and an AFIP Instruction and shall be reviewed periodically by the Board of Governors and approved by ASD(HA).

(2) Provide instruction in pathology and closely related subjects to officers of the Armed Forces; to other Federal Medical Services; and, based on availability, to civil service physicians and other persons who are authorized to study or receive continuing education at AFIP.

(3) Conduct experimental, statistical, and morphological research and investigation in the field of pathology.

(i) Emphasis shall be placed on subjects at the forefront of the field of pathology. Research programs shall concentrate on areas of pathology of special interest to the Department of Defense and those that shall maintain the unique expertise of AFIP.

(ii) AFIP shall seek collaborative research efforts with other elements of the Federal Government and the academic community where they are in support of the basic AFIP mission.

(4) Operate the Armed Forces Medical Examiner System in accordance with DoD Directive 6010.16.[1]

(5) Contract with the American Registry of Pathology for cooperative effort between AFIP and the civilian medical profession according to guidelines in 10 U.S.C. 176 and under such conditions that support the AFIP mission and that have been agreed upon by the Board of Governors and approved by the ASD(HA).

(6) Operate the Armed Forces Medical Museum and maintain a national pathologic reference collection for

[1] Copies may be obtained, if needed, from the U.S. Naval Publication and Forms Center Attn: Code 1062, 5801 Tabor Avenue, Philadelphia, PA 19120.

utilization in instruction and research by qualified and authorized persons, and display selected relevant exhibits to the public.

(i) The Director is authorized to accept and process gifts and donations of items, materials, and medical artifacts of scientific, historical, or archival significance in accordance with 10 U.S.C. 2601.

(ii) The AFIP may collect medical materials, specimens, photographs, case records, and related data from the military and other sources in photographical areas worldwide to maintain the reference collection for teaching and research.

(iii) Materials from the reference collection may be prepared or duplicated and made available to museums, medical schools, scientific institutions, and qualified individuals worldwide for medical education and research. An AFIP Instruction, reviewed by the Board of Governors and approved by the ASD(HA), shall delineate the guidelines under which reference materials may be made available within the Department of Defense, to other Federal Agencies, to non-Federal institutions, and to individuals worldwide in accordance with DoD Directive 2040.2 [2] and 4000.19.[3]

(7) Maintain a Medical Illustration Service for the collecting, preparing, duplicating, printing, publishing, exhibiting, referencing, and filing of medical illustrative material of medical importance, except original motion picture footage. Primarily for the support of programs of AFIP, this service may be made available to the medical services of the Armed Forces, other Federal Agencies, and qualified individuals in accordance with current AFIP procedures and in accordance with DoD Directive 4000.19.

(8) The Department of Legal Medicine shall provide a consultation and monitoring service to assist in the resolution of medical-legal cases, civil and criminal, for the Department of Defense and, when applicable, for other Federal Agencies. The following guidance is provided:

(i) The detailed responsibilities and functions of the Department of Legal Medicine shall be set forth in an AFIP Instruction that shall be coordinated with the Judge Advocates General, reviewed by the Board of Governors, and approved by the ASD(HA).

(ii) The Department of Legal Medicine shall maintain the central malpractice claim files for the Department of Defense and the Armed Forces. Armed Forces claims officers shall provide, at the earliest possible time, one legible copy of each medical malpractice claim and related records to the AFIP, and will include a cover letter stating that either consultation is requested or that the file is forwarded for retention only.

(iii) Personnel assigned to this department shall be subject to regulations governing off duty employment and standards of conduct for both legal and medical personnel, as set forth in Army regulations.

(iv) The Judge Advocate General of the Army shall provide technical supervision and assistance on matters relating to legal instruction and information.

(9) Administer the drug testing quality control program and provide consultative services to the Department of Defense for the military drug testing program.

(10) Provide additional administrative or technical assistance as directed by the ASD(HA).

§ 390a.7 Responsibilities.

(a) The *AFIP Board of Governors* shall review and recommend action on policy, program, personnel- and budget-related issues for AFIP and shall provide periodic oversight of program and budget execution.

(b) The *Assistant Secretary of Defense (Health Affairs)* [ASD(HA)] shall be the approving authority for AFIP policy issues. This shall include approval of the following:

(1) Civilian contracts, AFIP Instructions, and Joint Service Regulations that govern AFIP's relationship with the Services and the civilian medical community.

(2) Senior personnel appointments, other than the Director, who shall be appointed by the Secretary of Defense.

(3) Proposed AFIP budget.

(4) Substantial changes in the mission or functions of the AFIP.

(c) The *Secretary of the Army, as the Executive Agent,* shall be responsible for the administration of budget, personnel, facilities, and other resources required to support the mission and functions of AFIP.

(d) The *Surgeon General of the Army, or the Deputy Surgeon General,* shall serve as the reporting senior for the Director of AFIP for performance evaluation.

June 24, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-14616 Filed 6-28-88; 8:45 am]

BILLING CODE 3810-01-M

[2] See footnote 1 to § 390a.6(a)(4).

[3] See footnote 1 to § 390a.5(a)(4).

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 150

[Docket No. 71038-8108]

Requests for Presidential Proclamations Under the Semiconductor Chip Protection Act of 1984

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (PTO) is adding a new Subchapter C, Part 150 to its rules to implement the Presidential proclamation provisions of the Semiconductor Chip Protection Act of 1984, 17 U.S.C. 902(a)(2). The rules establish procedures for the evaluation of requests by foreign governments for the issuance of Presidential proclamations granting protection in the United States to mask works of foreign origin. The rules also permit the Commissioner of Patents and Trademarks independently to initiate an evaluation. The effect of the rules will be to establish a regime of protection for foreign mask works in the United States, provided mask works of U.S. origin are adequately protected in the country requesting a Presidential proclamation.

EFFECTIVE DATE: August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557-3065, or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The Semiconductor Chip Protection Act of 1984 (SCPA) established a new form of intellectual property protection for mask works that are fixed in semiconductor chips. Mask works are defined as a "series of related images, however fixed or encoded," that represent the three-dimensional pattern in the layers of a semiconductor chip. Thus, the subject matter of protection under the SCPA are the layout designs of semiconductor chips, known in some countries as "integrated circuit layout designs" or as "semiconductor topographies." The SCPA provides a ten-year term of protection for original mask works measured from their date of registration or first commercial exploitation anywhere in the world. To maintain protection, mask works must be registered in the United States Copyright

Office within two years of first commercial exploitation.

Protection for foreign mask works may be granted under both section 902 and section 914 of the SCPA. Section 902 sets out three different ways that foreign mask works may become eligible for protection in the United States. First, on the date the work is registered or is first commercially exploited anywhere in the world, the mask work is protectible if its owner is a national, domiciliary or sovereign authority of a foreign nation that is a party to a treaty that provides protection of mask works and to which the United States is also a party, or if a stateless person, wherever domiciled. Second, foreign mask works may be protected when they are first commercially exploited in the United States. The third way, set forth in section 902(a)(2), is where the foreign mask work comes within the scope of a Presidential proclamation. The President may issue a proclamation upon finding that a foreign nation extends to mask works of owners who are U.S. nationals or domiciliaries, protection (1) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (2) on substantially the same basis as provided in the SCPA. Pursuant to Executive Order 12504, 50 FR 4849 (February 4, 1985), requests for issuance of Presidential proclamations are to be presented to the President by the Secretary of Commerce.

Section 914 was included in the SCPA as a transitional provision, intended by Congress to encourage other countries to pass laws extending protection to this new form of intellectual property. Once laws were in place, it was reasoned, permanent protection for foreign mask works could be conferred under section 902 or through a multilateral treaty that extended coverage to mask works. Section 914 gives the Secretary of Commerce authority to issue orders extending interim protection to foreign mask work owners upon the satisfaction of certain conditions. First, the Secretary must find that the foreign nation is making good faith efforts and reasonable progress toward entering into a treaty with the United States, or toward enacting legislation that will protect U.S. mask works on the same basis as domestic mask works, or at a level similar to that provided under the SCPA. Second, the Secretary must determine that nationals, domiciliaries and sovereign authorities of the foreign nation are not engaged in the misappropriation, unauthorized distribution, or unauthorized commercial exploitation of mask works. Finally, the Secretary must determine that issuance of an interim order would promote the purposes of the SCPA and international comity with respect to the protection of mask works.

By Amendment 1 to Department Organization Order 10–14, issued December 3, 1984, the Secretary of Commerce delegated to the Assistant Secretary and Commissioner of Patents and Trademarks the authority under section 914 to make pertinent findings and to issue orders for the interim protection of foreign mask works. Amendment 2 to Department Organization Order 10–14, issued September 28, 1987, expanded the earlier delegation to include responsibility for prescribing regulations for the presentation to the President of requests for issuance of proclamations under section 902.

The Commissioner has issued orders granting interim protection under section 914 for mask works produced in Australia, Belgium, Canada, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Japan, Luxembourg, The Netherlands, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. All of the interim protection orders were recently extended until May 31, 1989. *See Extension of Previously-Granted Interim Orders Under the Semiconductor Chip Protection Act of 1984*, 53 FR 16308 (May 6, 1988).

This proceeding was initiated by a Notice of Proposed Rulemaking published at 53 FR 5588–5590 (February 25, 1988). The notice set forth proposed regulations for the submission and evaluation of requests that the Secretary of Commerce recommend the issuance or revocation of a Presidential proclamation granting U.S. protection to foreign mask works under section 902(a)(2) of the SCPA. Comments on the proposed rules were received from the Commission of the European Communities and the U.S. Semiconductor Industry Association.

Discussion of Specific Rules

Section 150.1 of the new rules sets forth relevant definitions. Section 150.2 specifies the conditions under which an evaluation of recommending the issuance, revision, suspension or revocation of a section 902 proclamation will be initiated by the Commissioner. Section 150.2(a) provides that the Commissioner must initiate an evaluation of the propriety of recommending the issuance of a section 902 proclamation upon receipt of a request from a foreign government. Section 150.2(b) gives the Secretary the discretion to initiate independently an evaluation concerning issuance, revision, suspension or revocation of a proclamation, or as directed by the Secretary of Commerce.

Section 150.3(a) states that requests for the issuance of a section 902 Presidential proclamation shall be made by "foreign governments." The definition of "foreign government" in section 150.1 of the rules makes clear that international intergovernmental organizations may request Presidential proclamation on behalf of their member states.

Section 150.3(b) lists the documentation that must accompany requests for issuance of a proclamation. The laws, legal rulings, regulations, and administrative orders submitted must be in unedited, full-text form. Where possible, the materials submitted should be reproduced from the original document, *e.g.*, from court reports or statutory instruments. Abstracts, summaries and commentaries are not acceptable. If the documents are not in English, a certified English translation must accompany them.

Section 150.4 sets out the procedure the Commissioner will follow after a request for issuance of a proclamation has been submitted, or following a decision independently to initiate an evaluation. If a foreign government requests a section 902 proclamation before a section 914 proceeding has taken place, under § 150.4(a) the Commissioner may initiate such a proceeding to compile a record of necessary information and, where appropriate, to provide interim protection in the United States while the section 902 request is pending. Section 150.4(b) provides that the information obtained during a section 914 proceeding, if one has been held, will be considered by the Commissioner in determining whether to recommend the issuance of a Presidential proclamation.

Section 150.4(c) provides that requests for Presidential proclamations, and notices of the Commissioner's determination independently to initiate section 902 evaluations, will be published in the **Federal Register**. Written comments will be requested. Section 150.4(d) requires the Commissioner to notify the Register of Copyrights and the Committees on the Judiciary of the Senate and the House of Representatives of the initiation of an evaluation. Under § 150.4(e), a hearing may be scheduled if the written comments raise issues that cannot be resolved through informal contacts. Section 150.4(f) provides that the record

to be considered by the Commissioner in determining whether to recommend a presidential proclamation will be the request from a foreign government, if any, written comments received, the record of any section 914 proceedings, and the information obtained in a hearing, if one is held.

Section 150.4(g) and (h) provide that the Commissioner will forward the draft recommendation to the Secretary, who will then forward a recommendation regarding issuance of a proclamation to the President. Section 150.5(a) makes clear that the recommendation for issuance of a proclamation may include terms and conditions regarding the duration of the proclamation. Section 150.5(b) provides that interested parties may request the revision, suspension or revocation of Presidential proclamations.

Comments on the Proposed Rules

Comments on the proposed rules were submitted by the Commission of the European Communities and the U.S. Semiconductor Industry Association (SIA). The Commission of the European Communities noted that any request for a proclamation in favor of mask works produced in the Member States will be made by the Commission. The Commission requested a clarification that the term "foreign governments" as used in § 150.3(a) includes international intergovernmental organizations which have been empowered by their member states to request Presidential proclamations granting U.S. protection to mask works produced in such states.

The PTO adopts the Commission's suggestion. The rules are not intended to preclude foreign governments from having requests for Presidential proclamations presented on their behalf by an international or regional intergovernmental organization. Accordingly, a definition of "foreign government" is added as § 150.1(b) of the rules, making clear that international intergovernmental organizations may request Presidential proclamations on behalf of their member states.

In its comments, the SIA requested § 150.4(c) be amended to require that the Commissioner hold a public hearing when requested by any interested party after an evaluation has begun. As proposed, § 150.4(e)(2)(ii) gives the Commissioner discretion to hold a hearing to gather additional information if material issues raised in written comments cannot be resolved less formally. SIA also requested that § 150.4(f) be amended to include information obtained in public hearings in the list of materials to be evaluated by the Commissioner. SIA suggested that § 150.4(c) specify a time period of thirty (30) days after publication of a request for comments in the **Federal Register** during which written comments and requests for a hearing may be submitted.

The PTO does not agree that the Commissioner should be required to hold a hearing as part of every section 902 evaluation whenever requested. Section 150.4(b) provides that information obtained during section 914 proceedings will be used in evaluating requests for Presidential proclamations. Moreover, under § 150.4(a) the Commissioner may institute section 914 proceedings if an interim order has not been issued in favor of mask works from such a requesting nation. Given the thoroughness with which section 914 proceedings are generally conducted, the Commissioner is expected to have available a substantial record concerning the degree of protection for U.S. mask works in the subject country. A separate hearing might only serve to cause delay in such cases.

Moreover, effective public participation in the section 902 evaluation process is not dependent on whether the Commissioner holds a hearing. The rules proceed from the assumption that any material issues relating to protection of U.S. mask works in a requesting foreign country can be raised in written comments, and that these issues can be resolved flexibly through informal *inter partes* contracts. Where issues cannot be resolved through such informal contracts, § 150.4(e)(ii) gives the Commissioner discretion to hold a hearing to obtain additional views and to assist in resolving the issues. It is not evident that a mandatory hearing upon request of interested parties would provide an opportunity for exchange of views or information that is not otherwise available under § 150.4(e).

The PTO agrees that, if the Commissioner elects to hold a hearing, the information obtained should be included in the record. Accordingly, § 150.4(f) is amended to make this clarification. It is also proper that the rules specify a time period for the submission of comments following publication in the **Federal Register** of the request for a proclamation or the Commission's determination to initiate independently a section 902 evaluation. Thus, to ensure that all interested parties have sufficient time to investigate and prepare complete written comments, § 150.4(c) is amended to specify that comments must be submitted within sixty (60) days of **Federal Register** publication.

Discussion of Principal Changes

A new § 150.1(b) has been added to the rules as proposed to clarify that international or regional intergovernmental organizations may request Presidential proclamations on behalf of their member states, provided the member states have empowered the organization to make such requests. Proposed § 150.1 (c)–(g) have been redesignated as § 150.1 (d)–(h). The definition of "mask work" in § 150.1(d) (proposed § 150.1(c)) has been modified slightly to conform to the language in section 901(a)(2) of the SCPA. The definition of "Presidential proclamation" in § 150.1(e) (proposed § 150.1(d)) has been changed slightly by substituting the words "applying for" for the word "making" before the word "registrations." The purpose of this change is to conform the language of the rule to section 908 of the SCPA, which relates to mask work registration. The definition of "request" in § 150.1(f) (proposed § 150.1(e)) has been changed to indicate that the Commissioner is not required to treat requests for the revision, suspension or revocation of a Presidential proclamation in the same way as requests for issuance of such proclamations (*see* discussion § 150.5(b), *infra*).

Section 150.2(a) has been expanded to make clear that the Commissioner may initiate independently an evaluation of recommending the revision, suspension, or revocation of a Presidential proclamation, as well as an evaluation of recommending the issuance of a proclamation. This change reflects the amendment to section 902(a)(2) made by the Semiconductor Chip Protection Act Extension of 1987, which clarifies that the President has the authority to revise, suspend or revoke, as well as issue, proclamations extending protection to foreign mask works.

Section 150.3(b) has been changed to state that requests for issuance of a Presidential proclamation must be accompanied by "a copy" of laws, legal rulings, regulations or administrative orders, rather than "an official copy" of such materials, as was proposed. This change is made to avoid confusion arising from the fact that the meaning of "official copy" may vary from country to country. Section 150.3.(b)(5) has been redesignated as § 150.3(b)(6), and a new § 150.3(b)(5) has been added to specify that the copies submitted to the PTO must be in full text, unedited, and where possible, be reproduced from the original document.

Section 150.4(c) has also been changed. The proposed rule stated that

notices of requests by foreign governments for the issuance of Presidential proclamations will be published in the Federal Register. Language has been added to make clear that notices of the Commissioner's determination independently to initiate evaluations will also be published in the Federal Register. Section 150.4(c) has also been changed to provide that comments shall be submitted to the Commissioner within sixty (60) days of publication of the Federal Register notice. Section 150.4(f) has been modified to include information obtained in a public hearing held pursuant to § 150.4(e)(ii), if such a hearing is held, in the list of materials to be evaluated by the Commissioner.

Section 150.5(b) has been changed to reflect the amendment to section 902(a)(2) made by the Semiconductor Chip Protection Act Extension of 1987. The first sentence provides that any interested party may request the "revision, suspension or revocation" of a proclamation. The second sentence has been modified to provide that "requests for revision, suspension or revocation of a proclamation will be considered in substantially the same manner as requests for the issuance of a section 902 proclamation." The word "substantially" has been added to indicate that the Commissioner need not initiate a formal evaluation in every case where a request is made for the revision, suspension or revocation of a Presidential proclamation, in contrast to situations where a foreign government requests the issuance of such a proclamation. While good faith requests for the revision, suspension or revocation of a proclamation will be accorded fair procedural treatment, it is proper that the Commissioner have flexibility at the outset to consider such requests on a case-by-case basis as experience is gained under these rules. If necessary, the PTO may amend the rules at a later time to provide additional procedures for consideration of requests for revision, suspension or revocation of Presidential proclamations.

Stylistic changes have also been made in §§ 150.2(a), 150.3(b)(6) (proposed §§ 150.3(b)(5) and 150.5(a), but these changes are for purposes of clarity and are not substantive in nature.

Other Considerations

This rule does not have a significant impact on the quality of the human environment or the conservation of natural resources.

This rule is in conformity with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the proposed rule will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*) The economic impact of a Presidential proclamation on small entities will be beneficial, since such proclamations may be issued only upon a finding that a foreign nation extends reciprocal protection to U.S. mask works.

The Patent and Trademark Office has determined that this rule is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. By extending protection to foreign mask work owners, the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets will be enhanced.

The Patent and Trademark Office has also determined that this notice has no federalism implications affecting the relationship between the national government and the states as outlined in Executive Order 12612.

The rule will not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3510 *et seq.*, since no record-keeping or reporting requirements within the coverage of the Act are place upon the public.

List of Subjects in 37 CFR Part 150

Administrative practice and procedure, Authority delegations, Semiconductor chips, Mask works.

For the reasons set out in the preamble, Chapter 1 of Title 37 CFR is amended by adding a new Subchapter C, Part 150, as follows:

SUBCHAPTER C—PROTECTION OF FOREIGN MASK WORKS

PART 150—REQUESTS FOR PRESIDENTIAL PROCLAMATIONS PURSUANT TO 17 U.S.C. 902(a)(2)

Sec.

Authority: 35 U.S.C. 6; E.O. 12504, 50 FR 4849, 3 CFR, 1985 Comp., p. 335.

§ 150.1 Definitions.

(a) "Commissioner" means Assistant Secretary and Commissioner of Patents and Trademarks.

(b) "Foreign government" means the duly-constituted executive of a foreign nation, or an international or regional intergovernmental organization which has been empowered by its member states to request issuance of Presidential proclamations on their behalf under this part.

(c) "Interim order" means an order issued by the Secretary of Commerce under 17 U.S.C. 914.

(d) "Mask work" means a series of related images, however fixed or encoded—

(1) Having or representing the predetermined, three-dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip product; and

(2) In which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

(e) "Presidential proclamation" means an action by the President extending to foreign nationals, domiciliaries and sovereign authorities the privilege of applying for registrations for mask works pursuant to 17 U.S.C. 902.

(f) "Request" means a request by a foreign government for the issuance of a Presidential proclamation.

(g) "Proceeding" means a proceeding to issue a interim order extending protection to foreign nationals, domiciliaries and sovereign authorities under 17 U.S.C. Chapter 9.

(h) "Secretary" means the Secretary of Commerce.

§ 150.2 Initiation of evaluation.

(a) The Commissioner independently or as directed by the Secretary, may initiate an evaluation of the propriety of recommending the issuance, revision, suspension or revocation of a section 902 proclamation.

(b) The Commissioner shall initiate an evaluation of the propriety of recommending the issuance of a section 902 proclamation upon receipt of a request from a foreign government.

§ 150.3 Submission of requests.

(a) Requests for the issuance of a

section 902 proclamation shall be submitted by foreign governments for review by the Commissioner.

(b) Requests for issuance of a proclamation shall include:

(1) A copy of the foreign law or legal rulings that provide protection for U.S. mask works which provide a basis for the request.

(2) A copy of any regulations or administrative orders implementing the protection.

(3) A copy of any laws, regulations or administrative orders establishing or regulating the registration (if any) of mask works.

(4) Any other relevant laws, regulations or administrative orders.

(5) All copies of laws, legal rulings, regulations or administrative orders submitted must be in unedited, full-text form, and if possible, must be reproduced from the original document.

(6) All material submitted must be in the original language, and if not in English, must be accompanied by a certified English translation.

§ 150.4 Evaluation.

(a) Upon submission of a request by a foreign government for the issuance of a section 902 proclamation, if an interim order under section 914 has not been issued, the Commissioner may initiate a section 914 proceeding if additional information is required.

(b) If an interim order under section 914 has been issued, the information obtained during the section 914 proceeding will be used in evaluating the request for a section 902 proclamation.

(c) After the Commissioner receives the request of a foreign government for a section 902 proclamation, or after a determination is made by the Commissioner to initiate independently an evaluation pursuant to § 150.2(a) of this part, a notice will be published in the **Federal Register** to request relevant and material comments on the adequacy and effectiveness of the protection afforded U.S. mask works under the system of law described in the notice. Comments should include detailed explanations of any alleged deficiencies in the foreign law or any alleged deficiencies in its implementation. If the alleged deficiencies include problems in administration such as registration, the respondent should include as specifically as possible full detailed explanations, including dates for and the nature of any alleged problems. Comments shall be submitted to the Commissioner within sixty (60) days of publication of the **Federal Register** notice.

(d) The Commissioner shall notify the Register of Copyrights and the Committees on the Judiciary of the Senate and the House of Representatives of the initiation of an evaluation under these regulations.

(e) If the written comments submitted by any party present relevant and material reasons why a proclamation should not issue, the Commissioner will:

(1) Contact the party raising the issue for verification and any needed additional information;

(2) Contact the requesting foreign government to determine if the issues raised by the party can be resolved; and,

(i) If the issues are resolved, continue with the evaluation; or,

(ii) If the issues cannot be resolved on this basis, hold a public hearing to gather additional information.

(f) The comments, the section 902 request, information obtained from a section 914 proceeding, if any, and information obtained in a hearing held pursuant to paragraph (e)(ii) of this section, if any, will be evaluated by the Commissioner.

(g) The Commissioner will forward the information to the Secretary, together with an evaluation and a draft recommendation.

(h) The Secretary will forward a recommendation regarding the issuance of a section 902 proclamation to the President.

§ 150.5 Duration of proclamation.

(a) The recommendation for the issuance of a proclamation may include terms and conditions regarding the duration of the proclamation.

(b) Requests for the revision, suspension or revocation of a proclamation may be submitted by any interested party. Requests for revision, suspension or revocation of a proclamation will be considered in substantially the same manner as requests for the issuance of a section 902 proclamation.

§ 150.6 Mailing address.

Requests and all correspondence submitted pursuant to these guidelines shall be addressed to: Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

Date: June 23, 1988.

[FR Doc. 88-14625 Filed 6-28-88; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[FRL-3400-9]

Delegation of State Authority; Washington; Air Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule amendment.

SUMMARY: This notice amends the Code of Federal Regulations by changing the mailing address of the Puget Sound Air Pollution Control Agency.

EFFECTIVE DATE: June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Laurie M. Kral, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101, Telephone: (206) 442-0180, FTS: 399-0180.

SUPPLEMENTARY INFORMATION:

List of Subjects

40 CFR Part 60

Intergovernmental relations, Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, Zinc.

40 CFR Part 61

Intergovernmental relations, Air pollution control, Asbestos, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

Date: June 6, 1988.

Robie G. Russell,

Regional Administrator.

Part 60 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7601.

Subpart A—General Provisions

2. Section 60.4 is amended by revising paragraph (b)(WW)(iii) to read as follows:

§ 60.4 Address.

* * * * *

(b) * * *
(WW) * * *
(iii) Puget Sound Air Pollution Control Agency, 200 West Mercer Street, Room 205, Seattle, Washington 98119-3958.
* * * * *

Part 61 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

Subpart A—General Provisions

2. Section 61.04 is amended by revising paragraph (b)(WW)(iii) to read as follows:

§ 61.04 Address.
* * * * *
(b) * * *
(WW) * * *
(iii) Puget Sound Air Pollution Control Agency, 200 West Mercer Street, Room 205, Seattle, Washington 98119-3958.
* * * * *

[FR Doc. 88-14384 Filed 6-28-88; 8:45 am]
BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-7

[FPMR Amdt. A-43]

Federal Travel Regulations

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This rule removes references to the General Services Administration's (GSA) publication, "Federal Travel Regulations," printed in handbook format, from Title 41, Part 101-7 of the Code of Federal Regulations (CFR). GSA will publish the Federal Travel Regulations in full text in the **Federal Register** in the near future. This action will expand public access to the Federal Travel Regulations by broadening distribution of the regulations to users of the CFR system.

EFFECTIVE DATE: June 29, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph M. Napoli, Travel and Transportation Regulations Staff; telephone FTS 557-1256 or commercial 703-557-1256.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least cost to society.

List of Subjects in 41 CFR Part 101-7

Government employees, Government property management, Travel, Travel allowances, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR Part 101-7 is amended as follows.

1. The authority citation for Part 101-7 is revised to read as follows:

Authority: 5 U.S.C. 4111, 5701-5709, 5721-5734, 5741-5742; 20 U.S.C. 905(a); E.O. 11012, March 27, 1962 (27 FR 2983), E.O. 11609, July 22, 1971 (36 FR 13747), E.O. 12466, February 27, 1984 (49 FR 7349), E.O. 12522, June 24, 1985 (50 FR 26337).

2. 41 CFR Part 101-7 is revised to read as follows:

PART 101-7—FEDERAL TRAVEL REGULATIONS

Note.—The General Services Administration publication, "Federal Travel Regulations," printed in handbook format, that was previously referenced in this part, is being codified and will be published in the **Federal Register** in full text. The provisions of the Federal Travel Regulations and the commuted rate schedule transmitted by GSA Bulletins FPMR A-40 and A-2, respectively, will continue in effect. For temporary regulations related to the Federal Travel Regulations, see FPMR Temporary Regulation A-24, Revision 1; FPMR Temporary Regulation A-25 and supplement 3 thereto; and FPMR Temporary Regulation A-30 and supplement 2 thereto in the appendix to this Subchapter A.

Dated: June 23, 1988.

John Alderson,

Administrator.

[FR Doc. 88-14655 Filed 6-28-88; 8:45 am]
BILLING CODE 6820-24-M

Proposed Rules

Federal Register
Vol. 53, No. 125
Wednesday, June 29, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3406-7]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: USEPA proposes to disapprove a site-specific revision to the ozone portion of the Ohio State Implementation Plan (SIP) for the General Motors (GM) Lordstown auto assembly facility in Warren (Trumbull County), Ohio. On October 5, 1978 (43 FR 46011), USEPA designated Trumbull County as nonattainment for ozone. The proposed revision requests a relaxation of emission limitations for GM's volatile organic compound (VOC) topcoat and final repair coatings operations, as established under Ohio Administrative Code (OAC) Rule 3745-21-09(C). USEPA has determined that this request does not constitute Reasonably Available Control Technology (RACT), as required under the Clean Air Act (Act). Today's action is based on a request submitted by Ohio on October 21, 1986.

DATE: Comments on this revision request and on USEPA's proposed rulemaking action must be received by July 29, 1988.

ADDRESSES: Copies of State submittals and other materials related to this rulemaking notice are available for inspection during normal business hours at the following addresses: (It is recommended that you telephone Steven D. Griffin, at (312) 353-3849, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 Watermark Drive, P.O. Box 1049, Columbus, Ohio 43266-0149.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Steven D. Griffin, (312) 353-3849.

SUPPLEMENTARY INFORMATION: Today, USEPA is considering a request to revise the emission limitations at GM's Lordstown facility for its topcoat and final repair coating lines, which was submitted by the Ohio Environmental Protection Agency (OEPA), as a revision to its ozone SIP. GM Lordstown is in Trumbull County, a designated ozone nonattainment area. The applicable VOC emission limitations, provided under OAC Rule 3745-21-09(C), are 2.8 pounds (lbs) VOC per gallon of coating, excluding water, for topcoat coatings, and 4.8 lbs VOC per gallon of coating, excluding water, for final repair coatings. Pursuant to OAC Rule 3745-21-04(C)(21)(b), compliance with these limitations was required by December 31, 1985. USEPA approved this rule as meeting the Act's Part D requirements for RACT [1] on October 31, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28097).

On March 18, 1986, GM submitted to OEPA a permanent variance request for the Lordstown facility. The variance would increase topcoat coating emissions to limitations of 3.3 to 7.0 lbs VOC per gallon of coating, excluding water, depending on application needs. In addition, the variance would increase final repair coating emissions to limitations of 6.1 to 6.2 lbs VOC per Gallon of coating, excluding water, depending on application.

On October 20, 1986, OEPA held a public hearing to consider GM's variance request. No public comments were submitted. On October 21, 1986, OEPA submitted GM's request to USEPA as a site-specific revision to the Ohio SIP. This submittal included materials transmitting the variance request, materials on the public hearing and a technical support document.

Technical Support for Variance Request

In GM's March 18, 1986, submittal to OEPA, GM contended that it was economically infeasible to employ further add-on control equipment for its topcoat coatings operation. GM investigated the use of carbon adsorption for spray booth emissions and additional thermal incineration for bake oven emissions. In addition, GM studied the cost-effectiveness of a RACT equivalent "bubble" [2] for the topcoat lines. GM rejected the economic feasibility of all of these methods. GM stated that conversion of the coating operations to base coat/clear coat would eliminate the need for additional add-on controls; however, the March 18, 1986, submittal failed to specify an exact date for this conversion.

Concerning final repair emissions, GM's March 18, 1986, submittal claimed that control methods to reduce emissions by 16.5 lbs VOC per hour in order to meet OAC Rules requirements would be technologically infeasible. GM stated that the required emission reductions could not be achieved, because the low VOC concentrations currently in the exhaust would prevent sufficient thermal destruction and carbon absorption capture efficiencies.

Review of Variance Request

USEPA has evaluated this revision to determine if Ohio has demonstrated that the revised limits would be RACT for GM Lordstown. To do this, Ohio would have had to demonstrate that the present VOC regulations are either economically or technically infeasible and the new limits are RACT. Ohio did not make such a showing.

USEPA is proposing to disapprove Ohio's SIP revision request for a variance at GM Lordstown from OAC Rule 3745-21-09(C), concerning VOC emission limitations for topcoat and final repair operations based on the following analyses:

(1) GM's revised limit for its topcoat operation would amount to an average VOC content of 5.2 lbs VOC per gallon of coating, minus water. USEPA does

[1] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator for Air and Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

[2] For a discussion of USEPA's "bubble", or emissions trading policy, see 51 FR 43814 (December 4, 1986).

not consider such a high VOC content as RACT for automotive topcoats, based on past Agency analyses. USEPA must consider Ohio's request for GM Lordstown as a permanent relaxation, because Ohio has failed to specify a date for conversion of GM's coating operations to base coat/clear coat.[3]

(2) In a memorandum of February 7, 1986, USEPA's Economic Analysis Branch (EAB) presented its evaluation of GM's cost analysis for spray booth controls. EAB's annualization techniques resulted in a systematic 19 percent reduction in GM's annualized costs. Therefore, GM's cost analysis appears to have overestimated these costs.

(3) GM currently uses a 27 percent solids dispersion lacquer (DL) topcoat coating. In a November 1978 report, entitled "Study to Determine Capabilities to Meet Federal EPA Guidelines for VOC Emissions," GM proposed to convert operations to higher solids solvent systems until waterborne coatings could be used to achieve final compliance with RACT limits. At that time, the facility was at 17 percent solids DL, which formed the appropriate baseline from which to figure cost-effectiveness. An interim increase to 27 percent solids DL was part of GM's plan to obtain an additional 5 years to achieve final compliance with the emission limits. Therefore, it is inappropriate for GM to later revise its baseline for determining cost-effectiveness to the 27 percent solids content which GM previously identified as an interim limit to support a compliance date extension, which GM received on October 31, 1980 (45 FR 72122).

(4) OEPA determined the overall cost-effectiveness of each of the various combinations of control measures that GM could employ. For each combination, OEPA also determined whether a combination would result in a RACT equivalent VOC emission reduction. OEPA's analysis indicated that certain combinations of control measures, considered by OEPA to result in emission reductions equivalent to RACT, were reasonably cost-effective.

(5) GM failed to investigate the option of continuing to use a 17 percent solids DL with add-on spray booth controls, which could result in VOC emission levels significantly less than current topcoat emissions.

(6) OEPA determined that the use of air cascading for three stack pairs would lower GM's cost-effectiveness estimates by approximately 20 percent.

(7) GM's variance request would result in VOC emissions of 945 tons per year greater than the RACT allowable in an ozone nonattainment area.

(8) In a memorandum of December 19, 1986, EAB provided additional information on GM's cost assessment, which indicated that GM appeared to emphasize performance under all conceivable circumstances and a minimum adjustment of spray booth operations in analysis of its carbon adsorption equipment. EAB stated that an analysis which considers various engineering and operational compromises (e.g., reduced air flow through the paint booth) in order to lower overall cost would be a more appropriate basis by which to assess achievement of RACT.

Proposed Action

For the reasons stated above, USEPA is proposing to disapprove GM's request for a permanent relaxation of its VOC emission limitations set forth under OAC Rule 3745-21-09(C) for the Lordstown facility's topcoat and final repair operations. OEPA has not adequately demonstrated that compliance with OAC Rule 3745-21-09(C) is economically infeasible. Moreover, USEPA has determined that this variance request does not constitute RACT, as required under the Clean Air Act for major VOC sources in nonattainment areas.

The State of Ohio has requested that the Mahoning-Trumbull area be redesignated to attainment. USEPA has not yet acted on this request. However, the attainment/nonattainment status of the area has no bearing on today's determination. Ozone state implementation plans are designed to satisfy the requirements of Part D of the Clean Air Act and to provide for attainment and maintenance of the ozone NAAQS. Redesignation from nonattainment to attainment does not authorize or enable a State to delete, alter, or rescind any of the VOC emisson limitations and restrictions contained in the approved ozone SIP. Changes to ozone SIP VOC regulations rendering them less stringent than those contained in the USEPA approved plan cannot be made unless a persuasive demonstration is made that the area will continue to maintain the ozone standard.

Under 5 U.S.C. 605(b), I certify that this SIP disapproval will not have a significant economic impact on a substantial number of small entities because it applies only to GM's Lordstown facility.

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401—7642.

Editorial note.—This document was received at the Office of the Federal Register on June 24, 1988.

Dated: June 29, 1987.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 88-14602 Filed 6-28-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3406-91 AL-022]

Approval and Promulgation of Implementation Plans; Alabama; Jefferson County Draft Lead Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the implementation plan for Jefferson County, Alabama drafted to provide for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for lead as required under section 110 of the Clean Air Act (CAA). EPA proposed to approve the Alabama lead State Implementation Plan (SIP) for Jefferson County on July 16, 1986 (52 FR 25716), and on February 11, 1987 (52 FR 4288), approved it on the condition that the Alabama Department of Environmental Management study and adopt, as appropriate, controls beyond the level of Reasonably Available Control Technology (RACT), since the plan did not include a demonstration that the NAAQS would be attained. Following a "RACT-plus" study in conformity with the conditional approval, the Jefferson County Department of Health (JCDH) submitted draft plan revisions on February 19, 1988. To make its regulation enforceable by the State, Jefferson County will submit the emission limits reflected in the regulations to Alabama as air permits. Next, Alabama will formally submit to EPA as part of their SIP Jefferson County's air permits. EPA is today proposing to approve Jefferson County's draft revisions before Alabama formally submits them because the draft SIP contains a demonstration of attainment of standards and all necessary measures to attain the standards. Additionally, in

[3] USEPA's October 20, 1981 (46 FR 51387), policy on automotive coatings provides for compliance date extensions through 1987 for topcoats.

the civil action of *NRDC* v *EPA*, Civ. No. 82-2317 (D.C.D.C.), EPA agreed to a schedule for final action regarding Jefferson County's lead regulation, which EPA has moved to extend until December 1, 1988. Thus, EPA must move as quickly as possible to complete rulemaking to bring the area into attainment with the lead standards. Before EPA takes final appproval action, Jefferson County will have to adopt the draft revised regulations and respond suitably to the comments mentioned in this notice. Also, Alabama must formally submit to EPA as part of their SIP the Jefferson County air permits that reflect the lead emission limits of the revised Jefferson County lead regulations.

DATES: Comments must be received on or before July 29, 1988.

ADDRESSES: Comments may be mailed to Beverly T. Hudson of EPA Region IV's Air Programs Branch. (See EPA Region IV address below). Copies of the submission and EPA's evaluation are available for public inspection during normal business hours at the following locations:

Air Programs Branch, Region IV, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, Alabama 36130.

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, EPA Region IV Air Programs Branch, at the above listed address, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 1978, the National Ambient Air Quality Standards (NAAQS) for lead were promulgated by EPA (43 FR 46246). Both the primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air (μg lead/m^3) averaged over a calendar quarter. Under Section 110 of the CAA, all states were to submit a SIP which will provide for attainment and maintenance of the lead NAAQS.

The State of Alabama on March 24, 1982, submitted to EPA a SIP for attainment of the lead NAAQS. On May 2, 1984 (40 FR 18737), EPA disapproved the Alabama SIP for lead because it did not provide for the attainment of the NAAQS for lead throughout the State. In 1984 and 1985, the State was not able to attain the standards due to fugitive emissions. Therefore, on March 18, 1985, and May 6, 1985, the State of Alabama submittted portions of a revised lead SIP which demonstrates attainment of the NAAQS for lead for all areas of Alabama except Jefferson County. This SIP focused on the area around Sanders Lead, in troy, Alabama where both monitored air quality data and air quality model predictions showed violations of the NAAQS for lead. Through modeling, Alabama demonstrated that the required control measures and emission limitations were adequate to assure attainment of the lead NAAQS in the vicinity of Sanders Lead. Accordingly, EPA proposed approval of this revised plan on January 2, 1986 (51 FR 41), and final approval was given on July 14, 1986 (51 FR 25366). On October 7, 1985, Alabama submitted to EPA a new lead SIP for Jefferson County (revised Regulation 6.11). EPA proposed to approve the revised Regulation 6.11 on July 16, 1986 (51 FR 25715). Since this regulation, which was initially adopted on September 9, 1985, was not accompanied by a demonstration of attainment of the NAAQS for lead, EPA conditionally approved it on February 11, 1987. The condition of approval was that the State fulfill by October 1, 1987, its commitment to submit to EPA any additional measures along with an appropriate demonstration necessary to assure timely attainment and maintenance as expeditiously as practicable but no later than October 1, 1989.

II. Draft Revised Jefferson County Lead Plan

On February 19, 1988, the Jefferson Department of Health submitted to EPA draft revisions to the SIP for lead in Jefferson County, Alabama, The draft revised regulations represent control of lead and particulate matter emissions from secondary lead smelters (specifically, the Interstate Lead Corporation) above the level required by RACT. This level of control (above RACT) is normally referred to as "RACT-plus."

The RACT-plus lead regulations were derived by: (1) Research and study of existing approved lead SIPs in other states; (2) investigation of effective lead air pollution controls at sources in geographic areas in attainment of the lead NAAQS; (3) conducting numerous inspections of Interstate Lead Corporation's (ILCO) plant to observe actual emission problems; (4) making extensive emission calculations on all known ILCO lead sources and emission points to estimate emissions under current, RACT-level control, as practiced by ILCO, and as projected for the RACT-plus level of control; and (5) evaluating the results of mathematical computer modeling which utilized these emissions estimates. The resultant regulations generated represent RACT-plus controls which, when implemented and enforced, will provide for attainment of the lead NAAQS.

III. Structure of the Draft Revised Lead Plan

To make its revised regulations enforceable by the State, Jefferson County will submit the emission limits reflected to them to Alabama as air permits. (A revision to Alabama's permit regulations (Chapter 16) which was approved by EPA in the August 28, 1985, **Federal Register** (50 FR 34804) provided that air permits issued under State authority by a local air pollution program are enforceable by the State.) Next, Alabama will formally submit to EPA as part of their SIP Jefferson County's air permits. In the meantime, EPA is proposing to approve the draft revisions because the draft SIP contains a demonstration of attainment by dispersion modeling. Additionally, in the civil action of *NRDC* v. *EPA*, Civ. No. 82-2137 (D.C.D.C.), EPA agreed to a schedule for final action regarding Jefferson County's lead regulations, which EPA has moved to extend until December 1, 1988. Thus, EPA must move as quickly as possible to complete rulemaking to bring the area into attainment with the lead standards.

IV. Results of EPA Review

Today's notice provides the results of EPA's review of Alabama's revised lead SIP for Jefferson County. This information is presented under the following headings.

A. Changes in the SIP and Regulations
B. Emission Data
C. Air Quality Data and Monitoring System
D. Demonstration of Attainment/Modeling
E. RACT-plus Control Plan for ILCO
F. Compliance Schedule for Jefferson County

More detailed information concerning EPA's review of this SIP is contained in a Technical Support Document for today's proposal, which is available for public inspection at the locations identified in the "Addresses" section of this notice.

A. Changes in the SIP and Regulations

The most important changes in the existing secondary lead smelter regulations were made to implement RACT-plus level of control for affected sources or emission release points. Other changes were made for clarity or consistency with other regulations. A public hearing was held on the revisions on April 5, 1988. EPA reviewed the draft revised regulations and made comments which were forwarded to the Jefferson

County Department of Health before the hearing. EPA is proposing to approve the revised regulations based on the condition that the version adopted by Jefferson County respond suitably to the following comments on their draft regulations.

Existing Paragraph 6.11.2(n) was modified by deletion of the requirement to meet an opacity standard for any emissions which escape the enclosed system. The proposed revision to paragraph 6.11.2(n) may lead to misinterpretation of the intent of the regulation. Paragraph 6.11.2(n) should be revised to specifically address that there will be no allowable visible emissions from a totally enclosed system. This could be accomplished by defining a "totally enclosed system" in lieu of revising the regulation.

Existing paragraph 6.11.2(j)(i) which requires wetting of paved areas should ensure against reentrainment of transposed lead particulate into the atmosphere after evaporation of the wetting agent. It is suggested that paved areas be required to be periodically vacuumed and this debris disposed of with the same care as the baghouse dusts.

Existing Paragraph 6.11.2(f) was modified by deletion of the requirement to meet an opacity standard for a charging door on the reverberatory furnace. Although the only existing secondary lead smelter in Jefferson County does not have a charging door for its reverberatory furnace, paragraph 6.11.2(f) should be structured to include opacity limitations addressing any future secondary lead smelters located in Jefferson County. This could be accomplished by exempting the only existing secondary lead smelter (ILCO) from the existing paragraph 6.11.2(f).

B. Emission Data

The Jefferson County Department of Health has submitted lead emissions data for stack and process fugitive emission and fugitive dust sources. A summary of actual emissions at ILCO in 1984 and 1986 and the allowable RACT and proposed RACT-plus emissions is shown in Table 6 of the Technical Support Document. The lead RACT-plus control measures provide for a 72 percent reduction in point source emissions (from RACT allowable to RACT-plus allowable). The process area of the facility will be required to be enclosed in a building (100 percent capture). This building enclosure will have a ventilation capture system (hoods, ductworks, baghouses and fans) which will capture at any given time at least 90 percent of the process fugitive emissions and send it to a control device (baghouse) which will have 99 plus percent control efficiency. The remaining 5–10 percent of the emissions contained in the enclosed building will be removed in a timely manner by the same ventilation capture system.

The magnitude and duration of the 5–10 percent lead emissions which will be removed by the building ventilation capture system will vary depending on such problems as malfunctions, corrosion, or operator error which ILCO may experience and the reaction time needed to solve these problems. The emissions generated by such problems are intermittent in nature and will be required to be corrected on a priority basis.

The additional RACT-plus control is provided to improve captivity of all escaping process emissions. EPA has concluded that the lead emission reductions will provide for attainment and maintenance of the lead NAAQS.

C. Air Quality Data and Monitoring System

In 1987 a total of seven (7) quarterly lead violations were measured at two different ambient monitoring sites in the vicinity of ILCO. These tabulated results ranged from 1.91 to 3.33 ug/m^3. Therefore, Jefferson County was required to implement the next phase, or the RACT-plus portion, on the secondary lead smelter to ensure compliance with the lead NAAQS by October 1, 1989.

D. Demonstration of Attainment/ Modeling

Since RACT-plus has been defined, the purpose of the modeling analysis was to assess the ambient lead levels with RACT-plus in place and determine if the lead concentrations will be below the NAAQS for lead.

Two models were selected to assess the RACT-plus Control Strategy. The Industrial Source Complex Long Term Model (ISCLT) was used to assess the concentrations on the low terrain near the facility caused primarily by the fugitive emissions. The VALLEY model was used to assess the lead concentrations on the higher terrain caused primarily by the emissions from the stacks.

The modeling techniques used in the demonstration supporting this revision are, for the most, based on modeling guidance in place at the time that the analysis was performed, i.e., the EPA "Guideline on Air Quality Models" (1986). Since that time, revisions to modeling guidance have been promulgated by EPA (53 FR 392, January 6, 1988). Because the modeling analysis was under way prior to publication of the revised guidance, EPA accepts the analysis.

Based on the modeling results, intermediate terrain (locations between plumb height and receptor height) was not a factor in the analysis. The design concentration was found to occur at the fenced property line using the ISCLT model. The major contribution to the design concentration was from the fugitive and stack emissions being downwashed due to building configuration. The results of the modeling concentrations are summarized in Tables 2, 3, and 4 of the Technical Support Document.

The meteorological data used in the analysis consisted of five years (1981–1985) of Birmingham, Alabama surface data and Centerville, Alabama mixing height data. These meteorological data in conjunction with maximum production rates as defined in the RACT-plus strategy predicted compliance with the quarterly lead standards of 1.5 $\mu g/m^3$.

Other stationary sources of lead and background sources of lead were evaluated in the existing lead State Implementation Plan (SIP) done in 1985. These sources were found at that time to be insignificant with respect to impact on ambient air quality in the vicinity of ILCO. This assessment has not changed. However, an additional source of lead has been located in the vicinity of ILCO since then. This source, A.J. Gerrard Company, Inc., is located within one kilometer of ILCO. A lead stack test was performed on Gerrard on November 30, 1987, by a private consultant to determine the facility's emissions. The emissions from Gerrard were modeled. The modeling revealed that Gerrard by itself causes no lead NAAQS exceedance and contributes an insignificant amount of lead to the monitoring sites around ILCO.

E. RACT-Plus Control Plan for ILCO

To ensure compliance with the lead NAAQS, a RACT-plus control plan was developed. The draft revised Jefferson County lead control plan contains new requirements at the RACT-plus level as follows:

1. A fully enclosed and ventilated building with control device shall be required to reduce and control emissions that escape as fugitive emissions from the furnaces' process and pollution control equipment currently.

2. Stack emissions from all baghouse stacks, except the building ventilation control device stack, will be limited to 0.001 grains of lead and 0.005 grains of particulate matter per dry standard cubic foot of exhaust. The building

ventilation control device exhaust stack will have emissions limits of 0.0001 grains of lead and 0.0005 grains of particulate matter per dry standard cubic foot of exhaust. These limitations when used in the computer modeling to demonstrate attainment show no predicted lead NAAQS exceedances at receptors near ILCO, Inc.

3. Each and every baghouse or control device stack must be maintained at a height of 75 feet as a minimum above the ground level of the source. Any stacks which have to be modified because of installation of the enclosure building must also meet GEP requirements as currently required in Chapter 2 of the Jefferson County Board of Health Air Pollution Control Rules and Regulations.

4. "Drinking Quality" water will be used by ILCO on those fugitive dust points that are controlled by wet suppression. Recycled effluent will no longer be allowed as a dust suppressant for selected fugitive dust emissions points.

5. The installation of collection systems on the casting operations, and the reverb furnace metal tapping, will not be required because these emissions will be captured in the ventilated building. All other collection systems will be maintained by ILCO.

6. Additional ambient lead monitors will be installed by the Jefferson County Department of Health and the present monitor at Hayes International will be relocated to help assess the impact and compliance status of fugitive and stack sources at ILCO after implementation of RACT-plus.

7. ILCO will install, operate, and maintain a meteorological data gathering system in accordance with a plan prepared by ILCO and approved by the Jefferson County Department of Health. In this manner, on-site meteorological data for future demonstration of attainment modeling will be generated.

F. Compliance Schedule for Jefferson County

On February 19, 1988, the Jefferson County Department of Health submitted a draft revised schedule for implementing the RACT-plus study for ILCO. The draft schedule contains specific and detailed progressive steps leading to attainment; a timeframe for adopting regulatory requirements to implement additional measures; deadlines for installation of additional controls; and other specific deadlines for bid packages, engineering changes and construction. Specifically, the schedule calls for adoption of a revised RACT-plus compliance schedule (if necessary) by June 13, 1988; complete plans and specifications and necessary permit applications by September 1, 1988; completion of all engineering changes and finalization of all bid packages by November 1, 1988; issuance of bid packages to vendors and contractors by December 1, 1988; construction of all equipment including new enclosed building with ventilation system by September 1, 1989; startup of all equipment by October 1, 1989; collection of ambient lead data with RACT-plus installed for 24 months by October 1, 1991. The draft revised schedule is considered by EPA to be adequate. This schedule is a portion of the SIP revision EPA is proposing to approve and can be enforced directly by EPA as well as the State and Jefferson County.

EPA's Action

EPA has evaluated the draft revisions submitted by the Jefferson County Department of Health and has determined that they meet the requirements of section 110(a) of the CAA. To make its regulations enforceable by the State, Jefferson County will submit the emission limits reflected in the regulations to Alabama as air permits. Next, Alabama will formally submit to EPA as part of their SIP Jefferson County's air permits. EPA proposes to approve Jefferson County's draft revisions before Alabama formally submits them because the County submitted to EPA a draft SIP which contains a demonstration of attainment of the standards and all necessary measures to attain the standard. Additionally, in the civil action of *NRDC v. EPA*, Civ. No. 82-2137 (D.C.D.C.), EPA agreed to a schedule for final action regarding Jefferson County's lead regulation, which EPA has moved to extend until December 1, 1988. Final approval will be given only if Jefferson County adopts the draft revised regulations and responds suitably to all of the comments made above. Also, Alabama must formally submit to EPA as part of their SIP Jefferson County air permits that reflect the lead emission limits of the draft revised Jefferson County lead regulations. Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Lead, Particulate matter.

Authority: 42 U.S.C. 7401-7642.

Date: May 25, 1988.

Lee A. DeHihns, III,

Acting Deputy Regional Administrator.

[FR Doc. 88-14613 Filed 6-28-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[FRL 3395-8]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: USEPA is proposing to disapprove a request from the State of Wisconsin to revise the attainment status designation, at 40 *Code of Federal Regulations* (CFR) 81.350, for a sub-city area in the City of Madison, Dane County, Wisconsin, from secondary nonattainment to attainment relative to the former total suspended particulates (TSP) National Ambient Air Quality Standards (NAAQS). The intent of this notice is to discuss the results of USEPA's review of the Wisconsin Department of Natural Resources (WDNR) redesignation request and to provide an opportunity for the public to comment on it and USEPA's proposed action. Under the Clean Air Act (CAA) and USEPA's transitional particulate matter policy (July 1, 1987, 52 FR 24682), TSP designations can continue to be changed if sufficient data are available to warrant such a change. USEPA will continue to process TSP redesignation requests because various regulatory provisions remain tied to an attainment status.

USEPA is proposing to disapprove Wisconsin's redesignation request because the WDNR failed to provide any evidence that (1) the monitoring data were representative of worst-case ambient concentrations, (2) emission reductions were federally approved, permanent, and resulted in the decrease in ambient concentrations, and (3) dispersion techniques were not responsible for the improvement in air quality. These redesignation criteria are contained in an April 21, 1983, memorandum entitled "Section 107 Designation Policy Summary" from Sheldon Meyers, then Director, Office of Air Quality Planning and Standards (OAQPS), and a September 30, 1985, memorandum entitled "Total Suspended Particulate (TSP) Redesignations" from Gerald A. Emison, Director, OAQPS.

DATE: Comments on this revision and on the proposed USEPA action must be received by July 29, 1988.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air Programs Branch, 230 S. Dearborn Street, Chicago, Illinois 60604;

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the CAA, the Administrator of USEPA has promulgated the NAAQS attainment status for all areas within each State. For Wisconsin, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR 81.350. These area designations are subject to revision whenever sufficient data become available to warrant a redesignation. A sub-city area of Madison, Wisconsin, was designated as not attaining the TSP standard. On July 23, 1987, pursuant to section 107(d)(5) of the CAA, the WDNR requested that the sub-city nonattainment area of Madison [1] be redesignated to attainment of the TSP NAAQS.

For areas designated nonattainment for TSP, a TSP SIP was required which satisfied the requirements of section 110(a) and Part D of the CAA which involved providing for attainment and maintenance of the TSP NAAQS. USEPA revised the particulate matter standard on July 1, 1987, (52 FR 24634) and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with nominal diameter of 10 micrometers or less (PM_{10}). USEPA will continue to process redesignations of areas from nonattainment to attainment or unclassifiable for TSP in keeping with past policy, because various regulatory provisions such as new source review and prevention of significant deterioration are keyed to the attainment status of areas. The July 1, 1987, notice (p. 24682, column 1) described USEPA's transition policy regarding TSP redesignations.

According to USEPA's transition policy, TSP redesignation requests will be reviewed for compliance with USEPA's redesignation policies issued in memoranda on April 21, 1983, and September 30, 1985.

USEPA's specific criteria for TSP redesignations, as identified in these policies, and USEPA's analysis of Wisconsin's request under these criteria are as follows:

Criterion 1

Violation-free monitoring data—Eight consecutive quarters of the most recent air quality data must reveal no violations of the TSP NAAQS. Monitors must be placed at the points of expected maximum TSP impact.

WDNR submitted three years of violation-free data for four sites in Madison and two years of data from an additional two sites in Madison. However, the WDNR failed to address the representativeness of the monitoring network at expected maximum TSP impact sites. At a minimum, the WDNR should have provided a map showing both emission sources and monitor locations. If monitors are not at worst-case locations, dispersion modeling should have been used to support the redesignation.

Criterion 2

Implementation of USEPA-approved control strategy—The USEPA-approved control strategy (i.e., Wisconsin State Implementation Plan (SIP)) must have been implemented. The improvement in monitored readings for TSP (since the base year used for the nonattainment designation) must be attributable to enforceable or permanent emission reductions implemented since that year.

WDNR failed to provide any reason for the air quality improvement. The WDNR should have discussed the reasons for the original secondary nonattainment designation; the control strategies implemented which resulted in cleaner air; the federal enforceability of the control strategies; and the complete implementation of the SIP (i.e., no sources out of compliance).

Criterion 3

Permanent emission reductions—Emission reductions and improvement in air quality must not be temporary or merely the result of economic downturn. It must be shown that it is highly unlikely that emission rates will increase significantly at any units operating below their allowable emission rates (e.g., because economic, technological or regulatory factors would prevent such increases). There must also be a showing that it is unlikely that production levels will increase significantly.

WDNR failed to discuss how the air quality standard will be maintained in the future. At a minimum, WDNR should have provided historical operating rates and historical actual emissions and discussed why emission increases are unlikely. Current allowable emissions should also have been provided. If sources are emitting at levels significantly below their allowable limits, then a modeled attainment demonstration would be required to demonstrate attainment if sources were to emit at allowable levels in the future. For any permanent source shutdowns, WDNR should have documented that, if such a source were to start up in the future, the source would be required to undergo new source review (NSR) Procedures.

Criterion 4

Dispersion techniques—Dispersion techniques, which are not creditable according to the revised section 123 regulations (50 FR 27892), cannot be responsible for the improvement in air quality.

WDNR failed to address dispersion techniques. WDNR should have reviewed all TSP sources and documented that dispersion techniques were not responsible for the improvement in air quality.

Conclusion

USEPA proposes to disapprove the redesignation request for a sub-city nonattainment area of Madison, Wisconsin, because the WDNR did not

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[1] The Madison sub-city secondary TSP nonattainment area is defined as follows:

North: Corner of Schlingen Ave. and Padkers Ave. west to Lakewook Blvd.

Northwest: Corner of Lakewook Blvd. and Del Mar Drive south to Lake Mendota, continue along eastern shoreline of Lake Mendota to Charter Street.

West: Charter St. north from Vilas St. to Lake Mendota.

South Southeast: Vilas St. east from Charter St. to west Washington Ave., continue southeast to Lake Monona, continue along west shoreline of Lake Monona northeast to Starkweather Creek.

North Northeast: Western branch of Starkweather Creek northeast to Fair Oak Ave. then north along Bryan St. to Milwaukee St. continue west to Oak St. then north to Aberg Ave., continue northwest to Packers Ave., then north to Schlingen Ave.

Remainder of Dane County: Better than national standard.

document the reasons for air quality improvement in Madison; nor did it document, or make a finding, as to whether current air quality will be maintained.

All interested persons are invited to submit written comment on the proposed redesignation. Written comments received by the date specified above will be considered in determining whether USEPA will approve the redesignation. After review of all comments submitted, the Administrator of USEPA will publish in the **Federal Register** the Agency's final action on the redesignation.

Under 5 U.S.C. section 605(b), I certify that this proposed disapproval of Wisconsin's redesignation request will not have a significant economic impact on a substantial number of small entities because it applies only to a sub-city area of Madison, Wisconsin, and imposes no new requirements on anyone.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: February 3, 1988.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 88–14600 Filed 6–28–88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[FRL–3395–7]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to disapprove a request from the State of Wisconsin to revise the attainment status designations, at 40 *Code of Federal Regulations* (CFR) 81.350, for a sub-city area of Manitowoc, Wisconsin, which is in Manitowoc County, from secondary nonattainment to attainment relative to the total suspended particulates (TSP) National Ambient Air Quality Standards (NAAQS). The intent of this proposed notice is to discuss the results of USEPA's review of the State redesignation request and to provide an opportunity for the public to comment. Under the Clean Air Act (CAA), designations can be changed if sufficient data are available to warrant such a change. While USEPA revised the particulate standard and eliminated the TSP NAAQS, USEPA will continue to process TSP redesignation requests because various regulatory provisions remain tied to an area's attainment status.

USEPA is proposing to disapprove the redesignation request because the Wisconsin Department of Natural Resources (WDNR) failed to provide any evidence that (1) eight quarters of violation-free data are available from monitors which are representative of worst-case ambient concentrations, (2) a USEPA-approved control strategy was fully implemented, (3) improvements in air quality were due to federally approved or permanent emission reductions, and (4) dispersion techniques were not responsible for the improvements in air quality.

DATE: Comments on this revision and on the proposed USEPA action must be received by July 29, 1988.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air Programs Branch, 230 S. Dearborn Street, Chicago, Illinois 60604;

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the CAA, the Administrator of USEPA has promulgated the NAAQS attainment status for all areas within each State. For Wisconsin, See 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978) and 40 CFR 81.350. These area designations are subject to revision whenever sufficient data become available to warrant a redesignation. A sub-city area of Manitowoc, Wisconsin, was designated as not attaining the TSP standard. For areas designated nonattainment for TSP, a revised TSP SIP was required which satisfies the requirements of section 110(a) and Part D of the CAA and provides for the attainment and maintenance of the TSP NAAQS.

USEPA revised the particulate matter standard on July 1, 1987 (52 FR 24634), which eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with nominal diameter of 10 micrometers or less (PM_{10}). However, USEPA will continue to process redesignations of areas from nonattainment to attainment or unclassifiable for TSP in keeping with past policy because various regulatory provisions such as new source review and prevention of significant deterioration are keyed to the attainment status of areas. The July 1, 1987, notice (p. 24682, column 1) describes USEPA's transition policy regarding TSP redesignations.

According to USEPA's transition policy, TSP redesignation requests will continue to be reviewed for compliance with USEPA's redesignation policy issued in the memoranda from the Director of the Office of Air Quality Planning and Standards (OAQPS) on April 21, 1983, and September 30, 1985.

On September 12, 1987, pursuant to Section 107(d)(5) of the CAA, the WDNR requested that a sub-city area of Manitowoc [1] be redesignated to attainment of the TSP NAAQS.

Redesignation Criteria for TSP

USEPA's specific criteria for TSP redesignation and USEPA's analysis of the Manitowoc request under each criterion follow.

Criterion 1

Violation-free monitoring data—Eight consecutive quarters of the most recent air quality data rust reveal no violations of the TSP NAAQS. Monitors must be placed at the points of expected maximum TSP impact.

WDNR submitted ambient monitoring data for seven sites which had operated for various years from 1983 through 1986. The most recent violation of the secondary TSP NAAQS occurred in June

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[1] The boundaries of the current TSP secondary nonattainment area are:

Manitowoc County: The Manitowoc sub-city area defined as follows:

North: East from Manitowoc River to York St. to Lake Michigan.

West: 14 St. south from Wollmer St. to Hamilton St.

South: Hamilton St. east from 14th St. to Lake Michigan.

East: Lake Michigan.

1985. According to the WDNR submittal, the January–June 1987 data show no violations. However, these data were not submitted because they were not yet published. The 1987 data are needed for this redesignation to provide the required eight quarters of violation-free data. USEPA cannot rely on WDNR's statement that the 1987 data were violation free. Also, USEPA generally considers that the requirement for eight quarters of data corresponds to two calendar years because the NAAQS for TSP is based on a calendar year. USEPA would consider the split year data as requested by WDNR if the State can document a definite reason (i.e., major plant shutdown or installation of major control) why air quality improved in July 1985.

In addition, the WDNR failed to address the representativeness of the monitoring network. At a minimum, the WDNR should have provided a map showing both emission sources and monitor locations. If monitors are not at worst-case locations, dispersion modeling could be used to support the redesignation.

Criterion 2

Implementation of USEPA-approved control strategy—The USEPA-approved control strategy (i.e., State Implementation Plan (SIP)) must have been implemented. The improvement in monitored readings for TSP (since the base year used for the nonattainment designation) must be attributable to federally enforceable or permanent emission reductions implemented since that year.

WDNR did not discuss the federal enforceability of emission reductions cited in its September 12, 1987, submittal. While WDNR implied that emission reductions from 1981 were the result of compliance with federally approved Reasonably Available Control Technology (RACT) rules, specific reductions and implemented controls should have been cited. WDNR did not cite federally enforceable emission reductions which had occurred since the last secondary violation (i.e., June 1985).

The WDNR did not discuss the reason for the air quality improvement from July 1985. Total actual emissions decreased by 45 tons per year (TPY) from 1985 to 1986, but it is unclear which of the sources were responsible for the decreases and whether the decreases are federally enforceable (actually impacted the monitors). In addition, the WDNR did not document that the SIP was fully implemented (i.e., that all sources are currently in compliance).

Criterion 3

Permanent emission reductions—Emission reductions and improvement in air quality must not be merely the result of economic downturn or temporary reductions in emission. It must be shown that emission rates will not increase significantly at units operating below their allowable emission rates (e.g., because economic, technological or regulatory factors would prevent such increases). It must also be shown that it is unlikely that production levels will increase significantly.

WDNR did not fully discuss why the current air quality will be maintained in the future. At a minimum, WDNR should have provided historical operating rates and historical actual emissions, and should have discussed why emission increases are unlikely. Current allowable emissions should also have been provided. If sources are emitting at levels significantly below their allowable limits, then a modeled attainment demonstration would be required to demonstrate attainment if sources were to emit at allowable levels in the future. For any permanent source shutdowns, WDNR would have to document that if the source were to start up in the future, it would be required to undergo New Source Review (NSR). WDNR did submit a copy of correspondence from the Manitowoc Corporation to the WDNR in which the Manitowoc Corporation requested the removal of several sources from the Wisconsin emission inventory. WDNR did not document that these sources were removed from the inventory and not banked for any future growth. The Manitowoc Corporation statement that several other sources will be closed in the next 3 years cannot be used to support this redesignation, because Wisconsin has not submitted any cerifications or other enforceable mechanisms to ensure that the shutdowns will actually occur. The State should be aware that all emission reductions used to support an approved redesignation cannot be used carte blanche in the future to provide offsets for growth.

Criterion 4

Dispersion techniques—Dispersion techniques, e.g., stack height increases, which are not creditable according to the revised section 123 regulations (50 FR 27892), cannot be responsible for the improvement in air quality.

WDNR did not address dispersion techniques. WDNR should review all TSP sources and document that dispersion techniques were not responsible for the improvement in air quality.

Conclusion

USEPA proposes to disapprove the redesignation request for a sub-city nonattainment area in Manitowoc, Wisconsin, because the WDNR did not document the reasons why the air quality improved and why the current air quality will be maintained.

All interested persons are invited to submit written comments on the proposed redesignation. Written comments received by the date specified above will be considered in determining whether USEPA will approve the redesignation. After review of all comments submitted, the Administrator of USEPA will publish in the **Federal Register** the Agency's final action on the redesignation.

Under 5 U.S.C. section 605(b), I certify that this proposed disapproval of the Manitowoc redesignation request will not have a significant economic impact on a substantial number of small entities because it applies only to the Manitowoc sub-city nonattainment area and imposes no new requirements on anyone.

List of Subjects in 40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7642.

Dated: January 29th, 1988.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 88–14601 Filed 6–28–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 81

[FRL–3395–6]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations: Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: USEPA is proposing to disapprove a request from the State of Wisconsin to revise the attainment status designation, at 40 *Code of Federal Regulations* (CFR) 81.350, for a sub-city area in the City of Green Bay, Brown County, Wisconsin, from secondary nonattainment to attainment relative to the former total suspended particulate

(TSP) National Ambient Air Quality Standards (NAAQS). The intent of this notice is to discuss the results of USEPA's review of the Wisconsin Department of Natural Resources (WDNR) redesignation request and to provide an opportunity for the public to comment on it and on USEPA's proposed action. Under the Clean Air Act (CAA) and USEPA's transitional particulate matter policy (July 1, 1987, 52 FR 24682), TSP designations can continue to be changed if sufficient data are available to warrant such a change. USEPA will continue to process TSP redesignation requests because various regulatory provisions remain tied to an area's attainment status.

USEPA is proposing to disapprove Wisconsin's redesignation request because the WDNR failed to provide any evidence that (1) the monitoring data were representative of worst-case ambient concentrations, (2) emission reductions were federally approved, (3) permanent, and resulted in the decrease in ambient concentrations, and (4) dispersion techniques were not responsible for the improvement in air quality. These redesignation criteria are contained in an April 21, 1983, memorandum entitled "Section 107 Designation Policy Summary" from Sheldon Meyers, then Director, Officer of Air Quality Planning and Standards (OAQPS), and a September 30, 1985, memorandum entitled "Total Suspended Particulate (TSP) Redesignations" from Gerald A. Emison, Director, OAQPS.

DATE: Comments on this revision and on the proposed USEPA action must be received by July 29,1988.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 S. Dearborn Street, Chicago, Illinois 60604;

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the CAA, the Administrator of USEPA has promulgated the NAAQS attainment status for all areas within each State. For Wisconsin, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR 81.350. These area designations are subject to revision whenever sufficient data become available to warrant a redesignation.

A sub-city area of Green Bay, Wisconsin, was designated as not attaining the TSP secondary standard. On July 23, 1987, pursuant to section 107(d)(5) of the CAA, the WDNR requested that the sub-city nonattainment area of Green Bay [1] be redesignated to attainment of the TSP NAAQS.

For areas designated nonattainment for TSP, a TSP State Implementation Plan (SIP) was required which satisfied the requirements of section 110(a) and Part D of the CAA, which included providing for attainment and maintenance of the TSP NAAQS. USEPA revised the particulate matter standard on July 1, 1987 (52 FR 24634), and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less (PM_{10}). USEPA will, however, continue to process redesignations of areas from nonattainment to attainment or unclassifiable for TSP in keeping with past policy, because various regulatory provisions such as new source review and prevention of significant deterioration are keyed to the attainment status of areas. The July 1, 1987, notice (p. 24682, column 1) describes USEPA's transition policy regarding TSP redesignations.

According to USEPA's transition policy, TSP redesignation requests will be reviewed for compliance with USEPA's redesignation policies issued in memoranda on April 21, 1983, and September 30, 1985.

Redesignation Criteria for TSP

USEPA's specific criteria for TSP redesignations, as identified in these policies, and USEPA's analysis of Wisconsin's request under these criteria are as follows:

[1] The Green Bay sub-city secondary nonattainment area is defined as follows:

North: Green Bay.

West: Corner west Mason St. and Ashland Ave. north to Mather St. West to Crocker Street, north on Crocker St. to Bylsby St., then to Green Bay.

South: Corner west Mason St. and Ashland Ave., east along west Mason St. to Irvin Ave.

East: Corner west Mason St. and Irvin Ave. north along Irvin Ave. to Green Bay.

Criterion 1

Violation-free monitoring data—Eight consecutive quarters of the most recent air quality data must reveal no violations of the TSP NAAQS. Monitors must be placed at the points of expected maximum TSP impact.

WDNR submitted 3 years of violation-free data for four sites in Green Bay and 2 years of data from an additional two sites in Green Bay. However, the WDNR failed to address the representativeness of the monitoring network at expected maximum TSP impact sites. At a minimum, the WDNR should have provided a map showing both emission sources and monitor locations. If monitors are not at worst-case locations, dispersion modeling should have been used to support the redesignation.

Criterion 2

Implementation of USEPA-approved control strategy—The USEPA-approved control strategy (i.e., Wisconsin SIP) must have been implemented. The improvement in monitored readings for TSP (since the base year used for the nonattainment designation) must be attributable to enforceable or permanent emission reductions implemented since that year.

WDNR failed to provide any reason for the air quality improvement. The WDNR should have discussed: The reasons for the original secondary nonattainment designation; control strategies implemented which resulted in cleaner air; the federal enforceability of the control strategies; and the complete implementation of the SIP (i.e., no sources out of compliance).

Criterion 3

Permanent emission reductions—Emission reductions and improvement in air quality must not be temporary or merely the result of economic downturn. It must be shown that it is highly unlikely that emission rates will increase signficantly at any units operating below their allowable emission rates (e.g., because economic, technological or regulatory factors would prevent such increases). There must also be a showing that it is unlikely that production levels will increase significantly.

WDNR failed to discuss how the air quality standard will be maintained in the future. At a minimum, WDNR should have provided historical operating rates and historical actual emissions and discussed why emission increases are unlikely. Current allowable emissions should also have been provided. If sources are emitting at levels significantly below their allowable

limits, then a modeled attainment demonstration might be required to demonstrate attainment if sources were to emit at allowable levels in the future. For any permanent source shutdowns, WDNR should have documented that, if such a source were to start up in the future that the source would be required to undergo new source review (NSR) procedures.

Criterion 4

Dispersion techniques—Dispersion techniques, which are not creditable according to the revised section 123 regulations (50 FR 27892), cannot be responsible for the improvement in air quality.

WDNR failed to address dispersion techniques. WDNR should have reviewed all TSP sources and documented that dispersion techniques were not responsible for the improvement in air quality.

Conclusion

USEPA proposes to disapprove the redesignation request for a sub-city nonattainment area of Green Bay, Wisconsin, because the WDNR failed to document the reasons for the air quality improvement in Green Bay; nor did it document, or make a finding, as to whether current air quality will be maintained.

All interested persons are invited to submit written comments on the proposed redesignation. Written comments received by the date specified above will be considered in determining whether USEPA will approve the redesignation. After review of all comments submitted, the Administrator of USEPA will publish in the Federal Register the Agency's final action on the redesignation.

Under 5 U.S.C. section 605(b), I certify that this proposed disapproval of Wisconsin's redesignation request will not have a significant economic impact on a substantial number of small entities because it applies only to a sub-city area of Green Bay, Wisconsin, and imposes no new requirements on anyone.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: February 12, 1988.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 88–14599 Filed 6–28–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 81

[FRL–3396–1]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations: Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to disapprove a request from the Wisconsin Department of National Resources (WDNR) to revise the attainment status designation, at 40 CFR 81.350, for a sub-city area of Beloit, Rock County Wisconsin, from secondary nonattainment to attainment of the total suspended particulates (TSP) National Ambient Air Quality Standard (NAAQS). The intent of this notice is to discuss the result of USEPA's review of WDNR's redesignation request and to provide an opportunity for the public to comment. Under the Clean Air Act (CAA), designations can be changed if sufficient data are available to warrant such a change. 42 U.S.C. 7407(e)(1). USEPA revised the particulate matter standard on July 1, 1987, 42 FR 24634 and eliminated the TSP ambient air quality standard. USEPA will continue to process redesignations of areas from nonattainment to attainment, or unclassifiable for TSP in keeping with past policy, because various regulatory provisions such as new source review and prevention of significant deterioration are keyed to the attainment status of areas. The July 1, 1987, notice (p. 24682, column 1) describes USEPA's transition policy regarding TSP redesignations.

According to USEPA's transition policy, TSP redesignation requests will be reviewed for compliance with USEPA's redesignation policy issued in the memoranda from the Director of the Office of Air Quality Planning and Standards (OAQPS) on April 21, 1983, and September 30, 1985. USEPA's policy consists of four criteria: (1) Eight consecutive quarters of the most recent air quality data reveal no violation of the TSP NAAQS; (2) improvement in monitored readings for TSP must be attributable to the implementation of USEPA approved control strategy; (3) emission reductions and improvements in air quality must be permanent and not merely the result of economic down turn or temporary; and (4) improvement in air quality cannot be attributed to dispersion techniques.

USEPA is proposing to disapprove Wisconsin's redesignation request because the WDNR failed to provide sufficient evidence to satisfy these criteria.

DATE: Comments on this revision and on the proposed USEPA action must be received by July 29, 1988.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air Programs Branch, 230 S. Dearborn Street, Chicago, Illinois 60604.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the CAA, the Administrator of USEPA has promulgated the NAAQS attainment status for all areas within each State. For Wisconsin, see 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These area designations are subject to revision whenever sufficient data become available to warrant a redesignation. A sub-city nonattainment area of Beloit, Wisconsin, was designated as not attaining the TSP standard.[1,2] For areas designated nonattainment for TSP, a revised TSP SIP was required which satisfies the requirements of section 110(a) and Part D of the CAA and provides for

[1] The primary particulate matter NAAQS are violated when, in a year, either: 1) the geometric mean value of TSP concentrations exceeds 75 micrograms per cubic meter of air (75 $\mu g/m^3$) (the annual primary standard), or 2) the maximum 24-hour concentration of TSP exceeds 260 $\mu g/m^3$ more than once (the 24-hour standard). The secondary particulate matter NAAQS is violated when, in a year, the maximum 24-hour concentration exceeds 150 $\mu g/m^3$ more than once.

[2] The Beloit sub-city secondary nonattainment area is located in Rock County and is currently defined as follows:

attainment and maintenance of the TSP NAAQS.

Redesignation Criteria for TSP and USEPA's Analysis for Beloit

On July 23, 1987, pursuant to section 107(d)(5) of the CAA, the WDNR requested that the sub-city nonattainment area of Beloit be redesignated to attainment of the TSP NAAQS. USEPA's specific criteria for TSP redesignation, as identified in these policies, and USEPA's analysis of the request for Beloit are as follows:

Criterion 1

Violation-free monitoring data—Eight consecutive quarters of the most recent air quality data must reveal no violations of the TSP NAAQS. Monitors must be placed at the points of expected maximum TSP impact.

WDNR submitted ambient monitoring data for seven sites in Rock County which had operated from 1983 through 1986. The most recent monitored violation of the secondary TSP NAAQS occurred in June 1985. According to the WDNR submittal, the January–June 1987 data show no violations. These data were not to submitted USEPA because they had not yet been published. The 1987 data are needed for this redesignation to provide the required eight quarters of violation-free data; USEPA cannot rely on WDNR's statement that the 1987 data were free of violation. Furthermore, USEPA generally considers that the requirement for eight consecutive quarters of data corresponds to 2 calendar years because the NAAQS corresponds to a calendar year. USEPA would consider that the split year data (July 1985–June 1987) WDNR can document a definite reason (i.e., major plan shutdown or installation of major control) for air quality improvement in July 1985. Alternatively, WDNR could submit the data for all of 1987.

In addition, WDNR failed to address the representativeness of the monitoring network. At a minimum, WDNR should have provided a map showing both emission sources and monitor locations. If monitors are not at worst-case locations, dispersion modeling should be used to support the redesignation.

Criterion 2

Implementation of USEPA-approved control strategy—The USEPA-approved control strategy (i.e., Wisconsin SIP) must be fully implemented. The improvement in monitored readings for TSP (since the base year used for the nonattainment designation) must be attributable to enforceable or permanent emission reductions implemented since that year.

WDNR did not discuss the Federal enforceability of emission reductions cited in their July 1, 1987 submittal. While WDNR implied that emission reductions from 1981 were the result of compliance with federally approved Reasonably Available Control Technology (RACT) rules, specific reductions and implemented controls should have been cited. WDNR did not cite federally enforceable emission reductions which had occurred since the last monitored violation of the secondary standard (i.e., June 1985).

WDNR states that total actual emissions decreased by 45 tons per year (TPY) from 1985 to 1986, but did not discuss the causal relationship of this decrease to the improvement in air quality from June 1985. Also, it is unclear what sources impact the monitors. Finally, the WDNR failed to document the complete implementation of the SIP (i.e., that all sources are currently in compliance).

Criterion 3

Permanent emission reductions—Emission reductions and improvement in air quality permanent and must not merely the result of economic downturn or other temporary reasons. There must be a showing that it is highly unlikely that emission rates will increase significantly at units operating below their allowable emission rates (e.g., because economic, technological or regulatory factors would prevent such increases). It must also be shown that is unlikely that production levels will increase significantly.

WDNR did not fully discuss the maintenance of the air quality standard will be maintained in the future. At a minimum, WDNR should have provided historical operating rates, and historical actual emissions, and discussed why emission increases are unlikely. Current allowable emissions should also have been provided. If sources are emitting at levels significantly below their allowable limits, then a modeled attainment demonstration would be required to demonstrate attainment, if sources were to emit at allowable levels in the future.

For any permanent source shutdowns, WDNR must document that if the source were to commerce operation in the future, the source would undergo New Source Review (NSR). WDNR did submit a copy of correspondence from the Beloit Corporation to the WDNR, in which the Beloit Corporation requested the removal of several sources from the Wisconsin emission inventory. WDNR must document that these sources were actually removed from the inventory and not banked for any future growth. The Beloit Corporation correspondence states several other sources will be closed in the next 3 years. This statement cannot be used this redesignation because, USEPA has no guarantee that the shutdowns will actully occur. Emission reductions used to support this redesignation cannot be used later to provide offsets for future growth.

Criterion 4

Dispersion techniques—(1) according to the revised Section 123 regulations (July 8, 1985, 50 FR 27892), (2) dispersion techniques, which are not creditable (3) cannot be responsible for the improvement in air quality.

WDNR did not address dispersion techniques. WDNR should review all TSP sources and document that dispersion techniques were not responsible for the improvement in air quality.

Conclusion

USEPA is proposing to disapprove the redesignation request for the Beloit nonattainment sub-city area, Wisconsin, because the WDNR failed to satisfy any of the four criteria discussed above.

All interested persons are invited to submit written comments on the proposed redesignation. Written comments received by the date specified above will be considered in determining whether USEPA will approve the redesignation. After review of all comments submitted, the Administrator of USEPA will publish in the **Federal Register** the Agency's final action on the redesignation.

Under 5 U.S.C. 605(b), I certify that the proposed disapproval of a redesignation request for a sub-city area of Beloit, Rock County, Wisconsin will not have a significant economic impact on a substantial number of small entities because it applies only to the Beloit sub-city nonattainment area and imposes no new requirements on anyone.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7642.

North: Portland Avenue east from Fourth Street to intersection with Woodward Avenue. Woodward Avenue east to Park Avenue.

West: Fourth Street north from Broad Street to Portland Avenue.

South: Broad Street west from Park Avenue to Fourth Street.

East: Park Avenue south from Woodward Avenue to Broad Street. 40 CFR 381.350.

Dated: January 4, 1988.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 88-14597 Filed 6-28-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[FRL 3395-9]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations: Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: USEPA is proposing to disapprove a request from the State of Wisconsin to revise the attainment status designation, at 40 *Code of Federal Regulations* (CFR) 81.350, for a sub-city area in the City of Kenosha, Kenosha County, Wisconsin, from secondary nonattainment to attainment relative to the former total suspended particulates (TSP) National Ambient Air Quality Standards (NAAQS). The intent of this notice is to discuss the results of USEPA's review of the Wisconsin Department of Natural Resources (WDNR) redesignation request and to provide an opportunity for the public to comment on it and on USEPA's proposed action. Under the Clean Air Act (CAA) and USEPA's transitional particulate matter policy (July 1, 1987, 52 FR 24682), TSP designations can continue to be changed if sufficient data are available to warrant such a change. USEPA will continue to process TSP redesignation requests because various regulatory provisions remain tied to an area's attainment status.

USEPA is proposing to disapprove Wisconsin's redesignation request because the WDNR failed to provide any evidence that (1) the monitoring data were representative of worst-case ambient concentrations, (2) emission reductions were federally approved, permanent, and resulted in the decrease in ambient concentrations, and (3) dispersion techniques were not responsible for the improvement in air quality. These redesignation criteria are contained in an April 21, 1983, memorandum entitled "Section 107 Designation Policy Summary" from Sheldon Meyers, then Director, Officer of Air Quality Planning and Standards (OAQPS), and a September 30, 1985, memorandum entitled "Total Suspended Particulate (TSP) Redesignations" from Gerald A. Emison, Director, OAQPS.

DATE: Comments on this revision and on the proposed USEPA action must be received by July 29, 1988.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air Radiation Branch, 230 S. Dearborn Street, Chicago, Illinois 60604.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the CAA, the Administrator of USEPA has promulgated the NAAQS attainment status for all areas within each State. For Wisconsin, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR 81.350. These area designations are subject to revision whenever sufficient data become available to warrant a redesignation.

A sub-city area of Kenosha, Wisconsin, was designated as not attaining the secondary TSP standard.[1] On August 13, 1987, pursuant to section 107(d)(5) of the CAA, the WDNR requested that the sub-city nonattainment area of Kenosha be redesignated to attainment of the TSP NAAQS.

For areas designated nonattainment for TSP, a TSP SIP was required which satisfied the requirements of section 110(a) and Part D of the CAA which included providing for attainment and maintenance of the TSP NAAQS. However, USEPA revised the particulate matter standard on July 1, 1987, (52 FR 24634) and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with nominal diameter of 10 micrometers or less (PM_{10}). USEPA will continue to process redisignations of areas from nonattainment to attainment or unclassifiable for TSP in keeping with past policy, because various regulatory provisions such as new source review and prevention of significant deterioration are keyed to the attainment status of areas. The July 1, 1987, notice (p. 24682, column 1) describes USEPA's transition policy regarding TSP redesignations.

According to USEPA's transition policy, TSP redesignation requests will be reviewed for compliance with USEPA's redesignation policies issued in memoranda of April 21, 1983, and September 30, 1985.

Redesignation Criteria for TSP

USEPA's specific criteria for TSP redesignations, as identified in these policies, and USEPA's analysis of Wisconsin's request under these criteria are as follows:

Criterion 1

Violation-free monitoring data—Eight consecutive quarters of the most recent air quality data must reveal no violations of the TSP NAAQS. Monitors must be placed at the points of expected maximum TSP impact.

WDNR submitted three years of violation-free data for two sites in Kenosha and 2 years of data from an additional site in Kenosha. However, the WDNR did not address the representativeness of the monitoring network at expected maximum TSP impact sites. At a mimimum, the WDNR should have provided a map showing both emission sources and monitor locations. If monitors are not at worst-case locations, dispersion modeling should have been used to support the redesignation.

Criterion 2

Implementation of USEPA-approved control strategy—the USEPA-approved control strategy (i.e., Wisconsin State Implementation Plan (SIP) must have been implemented. The improvement in monitored readings for TSP (since the base year used for the nonattainment designation) must be attributable to enforceable or permanent emission reductions implemented since that year.

WDNR failed to provide any reason for the air quality improvement. The

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[1] The Kenosha sub-city TSP secondary nonattainment area is defined as follows:

North: 52nd Street east from 39th Avenue to Lake Michigan.

West: 39th Avenue south from 52nd Street to 67th Street.

South: 67th from 39th Avenue to Lake Avenue.

East: Lake Michigan.

WDNR should have discussed: The reasons for the original secondary nonattainment designation; the control strategies implemented which resulted in cleaner air; the federal enforceability of the control strategies; and the complete implementation of the SIP (i.e., no sources out of compliance).

Criterion 3

Permanent emission reductions—Emission reductions and improvement in air quality must not be temporarily or merely the result of economic downturn. It must be shown that it is highly unlikely that emission rates will increase significantly at any units operating below their allowable emission rates (e.g., because economic, technological or regulatory factors would prevent such increases). There must also be a showing that it is unlikely that production levels will increase significantly.

WDNR failed to discuss how the air quality will be maintained in the future. At a minimum, WDNR should have provided historical operating rates and historical actual emissions and discussed why emission increases are unlikely. Current allowable emissions should also have been provided. If sources are emitting at levels significantly below their allowable limits, then a modeled attainment demonstration would be required to demonstrate attainment if sources were to emit at allowable levels in the future. For any permanent source shutdowns, WDNR should have documented that, if such a source were to start up in the future, the source would be required to undergo new source review (NSR) procedures.

Criterion 4

Dispersion techniques—Dispersion techniques, which are not creditable according to USEPA's Section 123 regulations (July 8, 1985, 50 FR 27892), cannot be responsible for the improvement in air quality.

WDNR failed to address dispersion techniques. WDNR should have reviewed all TSP sources and documented that dispersion techniques were not responsible for the improvement in air quality.

Conclusion

USEPA proposes to disapprove the redesignation request for a sub-city nonattainment area of Kenosha, Wisconsin, because the WDNR did not document the reasons for the air quality improvement in Kenosha; nor did it document, or make a finding, as to whether current air quality will be maintained.

All interested persons are invited to submit written comment on the proposed redesignation. Written comments received by the date specified above will be considered in determining whether USEPA will approve the redesignation. After review of all comments submitted, the Administrator of USEPA will publish in the **Federal Register** the Agency's final action on the redesignation request.

Under 5 U.S.C. section 605(b), I certify that this proposed disppproval of Wisconsin's redesignation request will not have a significant economic impact on a substantial number of small entities because it applies only to a sub-city area of Kenosha, Wisconsin, and imposes no new requirements on anyone.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642

Dated: January 15, 1988.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 88–14598 Filed 6–28–88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 644

[Docket No. 80625–8125]

Atlantic Billfishes; Fishery Conservation and Management

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement the Fishery Management Plan for Atlantic Billfishes (FMP). This rule would (1) prohibit the sale in the United States of blue marlin, white marlin, sailfish, and spearfish caught in specified portions of the Atlantic Ocean, (2) establish minimum sizes for possession of billfish shoreward of the outer boundary of the exclusive economic zone (EEZ), (3) prohibit possession of billfish shoreward of the outer boundary of the EEZ by pelagic longline and drift net vessels, (4) restrict the possession or retention of billfish shoreward of the outer boundary of the EEZ to those caught by rod and reel, and (5) require catch and effort reports from billfish tournaments. The intended effects of this rule are to reduce fishing mortality on billfish, maintain the highest availability of billfish to the U.S. recreational fishery, optimize the social and economic benefits to the Nation by reserving the billfish resource for the U.S. recreational fishery, and increase understanding of the condition of the billfish stock and the billfish fishery.

DATE: Comments must be received on or before August 8, 1988.

ADDRESSES: Comments on the proposed regulations and requests for copies of the FMP, draft regulatory impact review, draft environmental impact statement, and initial regulatory flexibility analysis should be sent to Rodney C. Dalton, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Comments on the information collection requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813–893–3722.

SUPPLEMENTARY INFORMATION: The FMP was prepared jointly by the South Atlantic, New England, Mid-Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils. A notice of its availability was published in the **Federal Register** (53 FR 21501, June 8, 1988). This proposed rule would implement the FMP, which establishes a management regime for Atlantic billfishes shoreward of the outer boundary of the EEZ of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea and regulates the possession and sale in the United States of billfish harvested from specified areas of the Atlantic Ocean. The species addressed by the FMP are sailfish, *Istiophorus platypterus;* white marlin, *Tetrapturus albidus;* blue marlin, *Makaira nigricans;* and longbill spearfish, *Tetrapturus pfluegeri.*

The directed fishery for billfish in the EEZ is almost entirely recreational, using conventional rod and reel. There is a small-scale, traditional handline troll fishery in the vicinity of Puerto Rico that has a small catch of billfish. There is a small, regional harpoon fishery for white marlin off southern New England. In addition, longliners, both domestic and foreign, have an incidental catch of billfish.

Optimum yield of the billfish fishery is specified in the FMP as the greatest number of billfish that can be caught by

the recreational fishery in the EEZ, consistent with the provisions of the FMP, considering the biological limitations of the stocks and the unavoidable incidental catches in other fisheries.

The Councils have identified the following principal problems in the billfish fishery which the FMP addresses:

(1) There is competition for the available resource between the recreational fishery and other fisheries that have a bycatch of billfish.

(2) There is a developing commercial market for billfish and an increasing value for the product, thus encouraging directed fishing for billfish and increased retention of incidentally caught billfish. This situation seriously jeopardizes the economically valuable, traditional recreational fishery and threatens to undermine the conservation ethic developed by this user group.

(3) There is a rapidly expanding domestic tuna longline fishery which has a higher billfish bycatch than the historical swordfish fishery. This increasing commercial supply of billfish increases the likelihood of the commercial market's expanding, further reducing availability to the recreational fishery.

(4) The current statistical data base is inadequate for stock assessment. A long-term, biologically sound, management regime, either domestic or international, will not be possible until an adequate and accurate data base is available.

The objectives of the FMP are to:

(1) Maintain the highest availability of billfish to the U.S. recreational fishery by implementing conservation measures that will reduce fishing mortality.

(2) Optimize the social and economic benefits to the Nation by reserving the billfish resource for its traditional use, which in the Atlantic EEZ is almost entirely a recreational fishery. In the Caribbean, where billfish are used as food, there is both a recreational and a small-scale handline fishery.

(3) Increase understanding of the condition of the billfish stocks and the billfish fishery.

On the basis of data presented in the FMP and in the Source Document, the Councils concluded that the greatest overall benefit to the Nation would result from reserving, to the extent possible, billfish occurring shoreward of the outer boundary of the EEZ for the U.S. recreational fishery. Consequently, under the FMP, only traditional recreational fishing gear (i.e., rod and reel) may be used in a directed fishery for billfish shoreward of the outer boundary of the EEZ of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

To ensure that a commercial market for billfish does not develop, which could thwart the objectives of the FMP, the sale of any billfish taken from the management unit as defined in § 644.2 would be prohibited in any State. This measure would apply to imported billfish as well as to those caught by domestic vessels fishing outside the EEZ. The Councils approved an exception to this prohibition of sale for the limited bycatch of the small-scale handline fishery in Puerto Rico. However, this exception would not be implemented until the Caribbean Council, in cooperation with the government of Puerto Rico, develops and implements a permitting and tracking system approved by the five involved Councils. A maximum of 100 billfish per year could be landed and sold under this exception. Fish thus excepted must remain in Puerto Rico.

The U.S. recreational billfish fishery currently releases approximately 50 percent of its catch. However, to ensure that most billfishes are released so that the number that remain available to the recreational fishery is increased, minimum size limits would be imposed for each species (except spearfish whose rarity in the fishery makes this unnecessary). These size limits would be 57 inches lower jaw-fork length (LJFL) for sailfish, 62 inches LJFL for white marlin, and 86 inches LJFL for blue marlin. All undersized billfish would have to be released by cutting the line near the hook without removing the fish from the water. The proposed size limits are based on reducing angler retention of these species beyond the present levels by an additional 30 percent, 50 percent, and 50 percent, respectively. This measure would allow competitive fishing tournaments to continue while still significantly reducing this source of billfish mortality.

To ensure that the maximum number of billfish are made available to the recreational fishery, possession or retention of billfish by commercial longline and drift net (gill or entanglement net) vessels would be prohibited shoreward of the outer boundary of the EEZ. All billfish caught by domestic longliners shoreward of the outer boundary of the EEZ would have to be released by cutting the line near the hook without removing the fish from the water.

No permits or fees would be required at this time for vessels engaged in the fishery.

Reporting Requirement

(a) Domestic catch and effort information necessary for monitoring the impacts of the FMP and the status of the billfish resource would be collected by requiring managers of billfish tournaments selected by the Director, Southeast Fisheries Center, NMFS, to report catch and effort. Mandatory tournament reporting may provide an inexpensive way to estimate total catch and effort in the recreational fishery, as these data are maintained by virtually every billfish tournament.

(b) Commercial longline fisheries would be sampled by use of logbooks and the voluntary observer program already implemented through the Fishery Management Plan for Atlantic Swordfish. Unless these data collection activities implemented through the swordfish plan cease, no further domestic data collection would be required by this FMP.

(c) A certificate of origin would be required for any shipment of imported billfishes in order to verify that the fish were harvested outside of the management area and, thus, were eligible for sale. Available information indicates that, at present, importation of billfishes is minimal.

Management Measures

All management measures that apply to billfishes in the Preliminary Fishery Management Plan for Billfish and Sharks (1978) and amendments to that plan (1982 and 1983) would be adopted by the FMP in their entirety. These include the requirement that all foreign vessels carry a U.S. observer, the prohibition on retention of billfish, and seasonal closures to avoid gear conflicts. Therefore, the foreign fishing regulations at 50 CFR 611.61 would not be changed by this rule.

The goal of the FMP to maximize the number of billfish available to U.S. recreational fishermen argues for application of the FMP's management measures to all vessels throughout the management unit (see § 644.2 below for definition of *Management unit*) for each species. Such a broad application, however, is thwarted by limited jurisdiction and practicality. Specifically, the Magnuson Act does not authorize management of foreign fishing for billfish outside the EEZ and, as a practical matter, enforcement can not be effectively conducted seaward of the EEZ.

For practicality of enforcement, NOAA proposes to apply the FMP's minimum size limits to billfish possessed shoreward of the outer boundary of the

EEZ, regardless of where caught. To do otherwise would jeopardize the effectiveness of this management measure since it would be virtually impossible to prove that an undersized billfish was harvested from its management unit. In view of the broad area of even the smallest management unit, it is highly unlikely that a billfish caught outside its management unit would be brought into the area shoreward of the outer boundary of the EEZ. Thus, this broadened application of the minimum size limits should not increase the effect of the management measure on current fishing practices.

Accordingly, the FMP's management measures on size limits, gear limitations, and incidental catch restrictions apply to persons fishing shoreward of the outer boundary of the EEZ and to possession or retention of billfish, regardless of where caught, aboard vessels shoreward of the outer boundary of the EEZ. The FMP's management measure restricting sale of billfish applies inside the United States to billfish harvested from the management unit. Thus, enforcement of all the management measures can be conducted dockside and at points of importation. Application of the management measures to U.S. vessels fishing within the management unit but outside the EEZ would be inequitable since foreign vessels would not be so restricted. In addition, such restrictions on U.S. vessels might jeopardize contractual arrangements of some U S. longliners whereby they are required to transfer all bycatch to a foreign firm in exchange for permission to fish within that nation's fisheries jurisdiction.

It is recognized that effective biological management must treat billfish stocks throughout their range. Therefore, implementation of an international management plan for billfish is recommended to complement the management initiatives undertaken by the United States shoreward of the outer boundary of the EEZ.

This proposed rule omits certain definitions and prohibitions, and sections on enforcement and penalties, incorporated into a final rule, technical amendment that will be published shortly, that consolidates into a new 50 CFR Part 620 those regulations common to all domestic fisheries.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Pub. L. 99-659, requires the Secretary of Commerce to publish regulations proposed by the Council within 15 days of receipt. At this time the Secretary has not determined that the FMP this rule would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Councils prepared a draft environmental impact statement for this FMP; a notice of availability was published on September 25, 1987 (52 FR 36096) and public comment was received until November 9, 1987.

The Under Secretary, NOAA, determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Councils prepared a draft regulatory impact review (RIR) which concludes that this rule, if adopted, would have the following economic effects. Management measure 1 (no sale) will result in a net present value (summed over 10 years at a 10 percent discount rate) of between −$2.45 million and +$7.39 million, with a best estimate of +$3.00 million, depending on the actual increase in the probability of catching an additional billfish and the marginal value used. Management measure 2 (minimum sizes) will result in a change in net present value (summed over 10 years at a 10 percent discount rate) of between +$0.41 million and +$16.26 million, with a best estimate of +$9.00 million, again depending on rate of recapture of released fish and marginal value. Management measure 3 (no possession by longline and drift net vessels) has an estimated cost to the commercial fishery of $0.12 million per year or $0.75 million summed over 10 years at a 10 percent discount rate. Recreational gains from this measure are included in those computed under management measure 1. Management measure 4 (data reporting requirements) will have an estimated cost of $3,899 per year. The present value of perpetual implementation costs is $38,990. Enforcement costs are estimated at $175,000 annually. A copy of the draft RIR may be obtained from NMFS (see **ADDRESSES**).

This proposed rule is exempt from the procedures of Executive Order 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow procedures of that order.

The Councils prepared an initial regulatory flexibility analysis (IRFA) as part of the draft RIR which concludes that this proposed rule, if adopted, would have significant effects on small entities. There were 625 swordfish permits issued in 1987. Thus, potentially this many "small businesses" may be impacted. The extent of impact ranges from no change under the no-action alternative to an estimated per business annual loss of $186 or a capitalized revenue loss of $1,860. An unknown number of charter boats may be impacted either positively, through increased demand for charters, or negatively, through loss of commissions for mounted fish as a result of minimum size restrictions. An unknown number of taxidermists may be impacted by these management measures. Data provided by a single taxidermist suggest a maximum potential loss of between 13 and 20 percent of his total revenue if no fish under the minimum sizes are mounted. There are a number of ancillary businesses that could be affected by the FMP's management measures, including seafood processors and distributors, docks and marinas, boatyards, fishing equipment manufacturers, etc. Data are not readily available to estimate the extent of impacts on these businesses. A copy of the IRFA may be obtained from NMFS (see **ADDRESSES**).

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget (OMB) for approval.

The public reporting burden for this collection of information relative to tournament reporting is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS and OMB (see **ADDRESSES**).

The Assistant Administrator for Fisheries, NOAA, determined that this proposed rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management

programs of the States in the five-Council area. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 644

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 24, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR is proposed to be amended by adding a new Part 644 to read as follows:

PART 644—ATLANTIC BILLFISHES

Subpart A—General Provisions

Sec.

Subpart B—Management Measures

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 644.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for Atlantic Billfishes prepared jointly by the South Atlantic, New England, Mid-Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils.

(b) This part regulates fishing for billfish by a person fishing on, and possession of billfish aboard, a vessel of the United States shoreward of the outer boundary of the EEZ in the Atlantic Ocean (including the Gulf of Mexico and the Caribbean Sea), and regulates the possession and sale in any State of a billfish harvested from its management unit.

§ 644.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Billfish means sailfish, *Istiophorus platypterus;* white marlin, *Tetrapturus albidus,* blue marlin, *Makaira nigricans,* and longbill spearfish, *Tetrapturus pfluegeri.*

Billfish tournament means any fishing competition involving billfish in which participants must register or otherwise enter or in which a prize or award is offered for catching billfish.

Councils means the following Regional Fishery Management Councils:

(a) South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407–4699;

(b) New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906;

(c) Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901–6790;

(d) Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 881, Tampa, FL 33609;

(e) Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, PR 00918–2577.

Drift net, sometimes called a drift entanglement net or drift gill net, means a flat, unmoored net suspended vertically in the water that entangles the head or other body parts of fish that attempt to pass through the meshes.

Eye-fork length (EFL) means the straight-line measurement from the eye to the fork of the caudal fin, as shown in Figure 1.

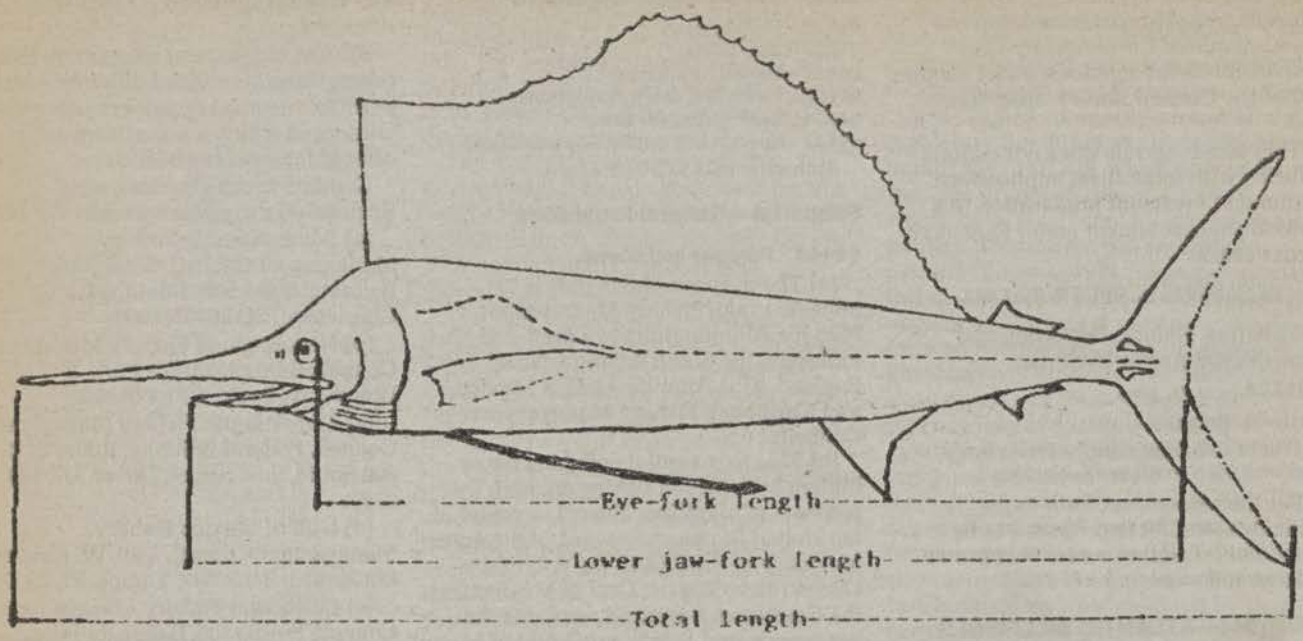

Figure 1. Billfish length measurements.

Lower jaw-fork length (LJFL) means the straight-line measurement from the tip of the lower jaw to the fork of the caudal fin, as shown in Figure 1.

Management unit means—

(a) For blue marlin and white marlin, the waters of the North Atlantic Ocean (including the Gulf of Mexico and the Caribbean Sea) north of 5° N. latitude;

(b) For sailfish, the waters of the North and South Atlantic Oceans (including the Gulf of Mexico and the Caribbean Sea) west of 30° W. longitude; and

(c) For longbill spearfish, the waters of the entire North and South Atlantic Oceans (including the Gulf of Mexico and the Caribbean Sea).

Pelagic longline means a type of fishing gear consisting of a length of line suspended horizontally in the water above the bottom from lines attached to surface floats and to which gangions (leaders) and hooks are attached.

Regional Director means the Director, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702; telephone, 813–893–3141, or a designee.

Rod and reel means a hand-held (includes rod holder) fishing rod with a manually or electrically operated reel attached.

Science Director means the Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305–361–5761, or a designee.

Total length (TL) means the straight-line measurement from the tip of the upper jaw to the plane of the more extended tip of the caudal fin when in its natural position, as shown in Figure 1.

§ 644.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) Regulations governing fishing in the EEZ by vessels other than vessels of the United States appear at 50 CFR Part 611, Subpart A, and §§ 611.60 and 611.61.

§ 644.4 Permits and fees. [Reserved]

§ 644.5 Recordkeeping and reporting.

A person conducting a billfish tournament from a port in an Atlantic, Gulf of Mexico, or Caribbean State and who is selected by the Science Director must maintain and submit a fishing record on forms available from the Science Director for each day of fishing in the tournament. Forms must be submitted so as to be received by the Science Director within 10 days of the conclusion of the tournament and must be accompanied by a copy of the tournament rules.

(a) The following information must be included on each form:

(1) Tournament name;

(2) Recorder's name and telephone number;

(3) Date for which the information is recorded;

(4) Hours fished (time from first line in the water to last line out of the water);

(5) Name of each vessel fishing that day;

(6) For each vessel listed, the species of each billfish boated or released;

(7) The weight and length of each billfish brought ashore;

(8) The name, address, and signature of the tournament director; and

(9) The date signed.

(b) In addition to the information required to be reported by paragraph (a) of this section, the following information is desired but is not mandatory:

(1) Prevailing weather conditions on the day reported, such as wind speed and direction, and sea height and direction; and

(2) Whether a tag was attached before the billfish was released.

§ 644.6 Vessel identification. [Reserved]

§ 644.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify or fail to report information required to be submitted, as specified in § 644.5.

(b) Possess a billfish less than the minimum size limit specified in § 644.21(a).

(c) Fail to release a billfish in the manner specified in § 644.21(b) or § 644.23.

(d) Possess or retain a billfish harvested by gear other than rod and reel or by a vessel with a pelagic longline or drift net aboard.

(e) Purchase, barter, trade, or sell a billfish harvested from its management unit, as specified in § 644.24(a).

(f) Falsify information submitted in accordance with § 644.24(b).

(g) Possess a billfish imported from outside its management unit into any State without the documentation, or with incomplete or falsified documentation, specified in § 644.24(b).

(h) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

§ 644.8 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 644.9 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 644.20 Fishing year.

The fishing year is January 1 through December 31.

§ 644.21 Size limits.

(a) The following minimum size limits, expressed in terms of lower jaw-fork length, apply for the possession of billfish:

(1) Blue marlin—86 in.

(2) White marlin—62 in.

(3) Sailfish—57 in.

(4) Longbill spearfish—no minimum size.

(b) A billfish under the minimum size limit must be released by cutting the line near the hook without removing the fish from the water.

(c) The following approximations of the minimum size limits for blue marlin, white marlin, and sailfish, expressed in terms of EFL, LJFL, TL, and whole, live weight, are provided for the convenience of fishermen. These approximations may not be substituted for the minimum size limits expressed in terms of lower jaw-fork length specified in paragraph (a) of this section.

	Eye-fork length (in.)	Lower jaw-fork length (in.)	Total length (in.)	Whole, live weight (lbs.)
Blue marlin	75	86	110	200
White marlin	53	62	81	50
Sailfish	49	57	76	30

§ 644.22 Gear limitations.

(a) The possession or retention shoreward of the outer boundary of the EEZ of a billfish harvested by gear other than rod and reel is prohibited.

(b) The possession or retention shoreward of the outer boundary of the EEZ of a billfish by a vessel with a pelagic longline or drift net aboard is prohibited.

§ 644.23 Incidental catch restrictions.

A billfish harvested by gear other than rod and reel shoreward of the outer boundary of the EEZ must be released in a manner that will ensure maximum probability of survival. A billfish caught by a pelagic longline shoreward of the outer boundary of the EEZ must be released by cutting the line near the hook without removing the fish from the water.

§ 644.24 Restrictions on sale.

(a) A billfish harvested from its management unit may not be purchased, bartered, traded, or sold in any State.

(b) A billfish that is imported into any State will be presumed to have been harvested from its management unit unless it is accompanied by documentation that it was harvested from another area. Such documentation must contain:

(1) The information specified in 50 CFR Part 246 for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(2) The name and home port of the vessel harvesting the billfish;

(3) The port and date of offloading from the vessel harvesting the billfish; and

(4) A statement signed by an official of the exporting firm attesting that each billfish was harvested from an area other than its management unit.

§ 644.25 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

[FR Doc. 88-14640 Filed 6-24-88; 4:06 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 125
Wednesday, June 29, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 24, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable, (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Marketing Service

Irish Potatoes Grown in Modoc and Siskiyou Counties, California, and in All counties in Oregon except Malheaur County (Marketing Agreement and Order No. 947).
Administrative Committee forms; not U.S. Government Forms
Recordkeeping; On occasion; Weekly; Monthly; Annually
Farms; Businesses or other for-profit; 3,053 responses; 478 hours; not applicable under 3504(h).
Roberta M. Taylor, (503) 238-7500.

- Animal and Plant Health Inspection Service

Federal Plan Pest and Noxious Weed Regulations,
PPQ Forms 519, 525, 526 and 526-1.
On occasion.
Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; 9,817 responses; 911 hours; not applicable under 3504(h), Andrea M. Elston, (301) 436-5518.

New

- Farmers Home Administration

7 CFR Part 1948-C, Intermediary Relending Program.
Form 1948-1,
Recordkeeping; On occasion.
State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 440 responses; 6,507 hours; not applicable under 3504(h).
Jack Holston (202) 382-9736.

- Farmers Home Administration

7 CFR Part 1900-B, Adverse Decisions and Administrative Appeals,
On occasion,
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 2,000 responses; 2,000 hours; not applicable under 3504(h)
Jack Holston (202) 382-9736.

- Farmers Home Administration

7 CFR Part 1951-R, Rural Development Loan Servicing,
1951-4.
On occasion, Quarterly, Annually,
State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations 494 responses; 2,726 hours; not applicable under 3504(h).
Jack Holston, (202) 382-9736.

Revision

- Packers and Stockyards Administration

Regulations and Related Reporting and Recordkeeping Requirements—Packers and Stockyards Act,
P&SA-5, 122, 124, 124-1, 125, 125-1, 125-3, 130, 131, 132, 134, 135, 116, 116-1, 202, 212, 215, 216, 218, 315, 316, 126, 126-2 and 126-3,
Recordkeeping; On occasion, Semi-annually, Annually,
Businesses or other for-profit,
31,153 responses; 361,321 hours; not applicable under 3504(h),
Merle E. Paulsen, (202) 447-4366.

- Farmers Home Administration

7 CFR Part 1980-E Business and Industrial Loan Program,
Forms 449-2, -4, -22,
Recordkeeping; On occasion; Monthly; Quarterly,
State or local governments; Businesses or other for-profit; Small businesses or organizations; 18,703 responses; 79,556 hours; not applicable under 3504(h),
Jack Holston, (202) 382-9736.

Donald E. Hulcher,
Acting Departmental Clearance Officer.
[FR Doc. 88-14661 Filed 6-28-88; 8:45 am]
BILLING CODE 3410-01-M

Forest Service

Noxious weed control; Bitterroot National Forest, Ravalli County, Montana, and Idaho County, Idaho; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement on plans for controlling noxious weeds on the Bitterroot National Forest.

The Bitterroot National Forest has significant acres of land which contain noxious weeds that encroach on, and in some cases threaten, wildlife winter range, domestic livestock range, and adjoining private lands. Noxious weeds create special management problems for the Bitterroot Forest. Upon identification of public issues and management concerns, a full range of alternatives will be considered, including a no-action alternative.

Federal, State, and local agencies, local landowners, and other interested

individuals and organizations who may be affected by the decisions are encouraged to participate in the process. Open houses for scoping of public issues and concerns will be held in Hamilton, Stevensville, and Darby, Montana, in July 1988. Written comments on issues and concerns should be mailed to Robert S. Morgan, Forest Supervisor, Bitterroot National Forest, 316 North Third Street, Hamilton, Montana, 59840, by August 15, 1988.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and be available for public review by February 1, 1989. At that time, EPA will publish a notice of availability of the DEIS in the **Federal Register.**

The comment period on the DEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register.** After the comment period ends, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by May 1, 1989. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The responsible official, Robert S. Morgan, Forest Supervisor, Bitterroot National Forest, will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

Questions about the proposed action and environmental impact statement should be directed to B. John Losensky, Forest Ecologist, Lolo National Forest, telephone number (406) 329–3819.

Date: June 21, 1988.

Robert S. Morgan,

Forest Supervisor.

[FR Doc. 88–14666 Filed 6–28–88; 8:45 am]

BILLING CODE 3410–11–M

ARMS CONTROL AND DISARMAMENT AGENCY

The President's General Advisory Committee on Arms Control and Disarmament; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following Presidential Committee meeting:

Name: General Advisory Committee on Arms Control and Disarmament.

Date: July 20, 1988.

Time: 8: 30 a.m.

Place: State Department Building, Washington, DC.

Type of Meeting: Closed.

Contact: William C. Golbitz, Executive Director, General Advisory Committee on Arms Control and Disarmament, Room 5927, Washington, DC., 20451. (202)–647–5178.

Purpose of Advisory U.S. Committee: To advise the Director of the Arms Control and Disarmament Agency on arms control and disarmament policy and activities, and from time to time to advise the President and the Secretary of State respecting matters affecting arms control, disarmament, and world peace.

Agenda: The Committee will review specific arms control and related treaty issues; an Executive session will be held.

Reason for closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the Arms Control and Disarmament Agency dated June 17, 1988, made pursuant to the provisions of section 10(d) of the Federal Advisory Committee Act as amended.

William J. Montgomery,

Committee Management Officer.

[FR Doc. 88–14645 Filed 6–28–88; 8:45 am]

BILLING CODE 6820–32–M

COMMISSION ON CIVIL RIGHTS

Montana Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 2:00 p.m., on July 16, 1988, at the Sheraton Hotel, 27 North 27th Street, Billings, Montana 59102. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Betty Babcock or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 20, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–14580 Filed 6–28–88; 8:45 am]

BILLING CODE 6335–01–M

Texas Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Texas Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on July 22, 1988, at the Hyatt Regency Hotel, 123 Losoya Street, San Antonio, Texas 78205. The purpose of the meeting is to plan a projected forum addressing educational issues and to discuss civil rights issues affecting the State of Texas.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Adolfo Canales or Philip Montez, Driector of the Western Regional Division (213) 894–3437, (TDD 213/894–0508:). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 21, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88– 14581 Filed 6–28–88; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Survey of Housing Starts, Sales and Completions.

Form Numbers: Agency—SOC–900/900.1/900A/900A.1; OMB–0607–0110.

Type of Request: Extension of a currently approved collection.

Burden: 8,925 respondents; 4,650 reporting hours.

Average Time Per Response: 23 minutes.

Needs and Uses: This survey is used to collect data on new residential housing units started, under construction, and completed; and on the number of new houses sold and for sale. The information is used by government agencies to evaluate economic policy, to measure progress

towards the national housing goal, to make policy decisions, and to formulate legislation. The Bureau of Economic uses the information in developing the GNP.
Affected Public: Individuals or households and businesses or other for-profit institutions.
Frequency: Monthly.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Francine Picoult, 395–7340.

Agency: Bureau of the Census.
Title: 988 Company Organization Survey (COS).
Form Number: Agency—NC–9901 and NC–9907; OMB–0607–0444.
Type of Request: Reinstatement of a previously approved collection.
Burden: 57,000 respondents; 56,375 reporting hours.
Average Time Per Response: 59 minutes.
Needs and Uses: The purpose of this survey is to update and maintain Census' file of company and establishment records, which in turn will update the Standard Statistical Establishment List (SSEL). The purposes of the SSEL are to provide a standard basis for assigning SIC codes for establishments. To provide a single universe for selecting and maintaining statistical samples of establishments, and to provide establishment level data from multiestablishment companies. The COS also provides a current directory of business locations for use in other Census surveys, and data needed to develop the mailing list for the economic censuses.
Affected Public: Businesses or other for-profit institutions, non-profit institutions, and small businesses or organizations.
Frequency: Annually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Francine Picoult, 395–7340.

Agency: Bureau of the Census.
Title: Special Labor Force Census of Standing Rock Indian Reservation.
Form Numbers: Agency—SR–1 and SR–2; OMB–NA.
Type of Request: New collection.
Burden: 2,450 respondents; 612 reporting hours.
Average Time Per Response: 15 minutes.
Needs and Uses: Job Service North Dakota, the South Dakota Department of Labor, and the Standing Rock Tribe have requested Census to conduct this special census because they believe BLS unemployment estimates for the Standing Rock Reservation are too low.
Affected Public: Individuals or households.
Frequency: One time.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Francine Picoult, 395–7340.

Agency: Bureau of the Census.
Title: 1988 Agricultural Economics and Land Ownership Survey.
Form Numbers: Agency—88A9A and 88A9B; OMB–NA.
Type of Request: New collection.
Burden: 85,000 respondents; 62,050 reporting hours.
Average Time Per Response: 44 minutes.
Needs and Uses: This survey will be used to collect economic data on U.S. farm operations and farm households, and on the nation's farm land ownership. This information is needed because complete, reliable data are not available to accurately describe current conditions.
Affected Public: Farms.
Frequency: Quinquennially.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 23, 1988.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 88–14591 Filed 6–28–88; 8:45 am]

BILLING CODE 3510–07–M

Foreign-Trade Zones Board

[Docket No. 21–88]

Foreign-Trade Zone 50; Application for Extension of Subzone Status for Toyota Auto/Truck Parts Plant, Long Beach, CA; Extension of Comment Period

The period for comments on the above case, involving the proposed extention of special-purpose foreign-trade subzone status for the auto/truck parts manufacturing plant of Toyota Auto Body, Inc., of California, in Long Beach, California (53 FR 16178, May 5, 1988), is extended to August 1, 1988, to allow interested parties additional time to comment on the proposal.

Comments in writing are invited during this period. Submissions should include 5 copies. The public record will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 23, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–14658 Filed 6–28–88; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration, Import Administration Department of Commerce

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews .

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews

EFFECTIVE DATE: June 29, 1988.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230: telephone: (202) 377–4733/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register**— (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a(a)(1), (a)(2), (a)(3), and § 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders and findings

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than Junce 30, 1989.

Antidumping duty proceedings and firms	Periods to be reviewed
Brazil: Construction Castings (A-351-503)	05/01/87-04/30/88
COSIGUA	
Brazil: Certain Tubeless Steel Disc Wheels (A-351-606)	12/19/86-04/30/88
Borlem Empreedimentos	
FNV Vehiculos	
Brazil: Frozen Concentrated Orange Juice (A-351-605)	04/29/87-04/30/88
Citrosuco Paulista	
Cargill Citrus	
Coopercitrus (Frutesp)	
Bascitrus	
Branco Peres Citrus	
Central Citrus	
Citrovale	
Citro Mojiana	
Citro Pectina	
Frutropic	
Industrusas Alimenticias Maguary	
Industusas J.S. Durate	
Makro Atacadista	
Montecitrus	
Quimicas	
Suvalan	
India: Certain Iron Construction Castings (A-533-501)	05/01/87-04/30/88
Agarwalla	
Carnation	
Commex	
Crescent Foundry	
Govind Steel	
Hindusthan	
Ind Strips	
Lincoln	
Madras Forgings	
Serampore	
Super Castings	
Tirupati	
India: Certain Welded Carbon Steel Pipe and Tube Products (A-533-502)	05/01/87-04/30/88
Tata Iron	
Jindal	
Bharal	
Japan: Portable Electric Typewriters (A-588-087)	05/01/87-04/30/88
Brother	
Matsushita	
Panasonic	
Canon	
Silver Seiko	
Republic of Korea: Malleable Cast-Iron Pipe Fittings (A-580-507)	05/01/87-04/30/88
Migin	
Shin Han	
PRC: Iron Construction Castings (A-570-502)	05/01/87-04/30/88
Minmetal Beijing	
Chemical	
China Light	
China Merchants	
China National Arts & Crafts	
China National Cereals	
China National Machinery & Equipment	
China National Machinery	
China National Metals and Minerals	
China Resources	
Ever Gain	
Far East	
Sinotrans Anhai	
Wheat Ian	
Wuhan Shipbuilding	
Taiwan: Certain Circular Welded Carbon Steel Pipe and Tube (A-583-008)	05/01/87-04/30/88
Far East Machinery	
An Mau	
Kao Hsung Chang	
Yeih Hsing	
Taiwan: Malleable Cast-Iron Pipe Fittings (A-583-507)	05/01/87-04/30/88
San Yang	
De Ho	
Kwang Yu	
Young Shieng	
Tai Yang	
Turkey: Certain Circular Welded Carbon Steel Pipe and Tube (A-489-501)	05/01/87-04/30/88
Borusan	

Countervailing duty proceedings	Periods to be reviewed
Mexico: Bricks (C-201-017)	01/01/87-12/31/87
Mexico: Ceramic Tile (C-201-003)	01/01/87-12/31/87
Sweden: Viscose Rayon Staple Fiber (C-401-056)	01/01/87-12/31/87

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.53a(c) and 355.10(c).

Date: June 23, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-14657 Filed 6-28-88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Reviews on Certain Steel Products; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of requests for short-supply determinations under Article 8 of the U.S.-Austria, U.S.-Australia, U.S.-Brazil, U.S.-EC, U.S.-Hungary, U.S.-Korea, U.S.-Poland, U.S.-Spain, and U.S.-Trinidad and Tobago Arrangements Concerning Trade in Certain Steel Products, Article 7 of the U.S.-Romania and U.S.-Venezuela Arrangements Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Mexico and U.S.-Finland Understandings Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to certain carbon steel wire rod and certain flat-rolled steel.

DATE: Comments must be submitted on or before July 11, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone (202) 377-0159 or telefax (202) 377-1388.

SUPPLEMENTAL INFORMATION: Article 8 of the U.S.-Austria, U.S.-Australia, U.S.-Brazil, U.S.-EC, U.S.-Hungary, U.S.-Korea, U.S.-Poland, U.S.-Spain, U.S.-Trinidad and Tobago Arrangements Concerning Trade in Certain Steel Products, Article 7 of the U.S.-Romania and U.S.-Venezuela Arrangements Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Mexico and U.S.-Finland Understandings Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provide that if the United States determines that, because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the United States for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage should be allowed for such product or products.

We have received short-supply requests for the following products: (1) Certain AISI grade 1022 wire rod, 5/16 and 3/8 inch in diameter, silicon killed, industrial quality; and (2) certain AISI grade C1008 or C1010 hot-rolled steel sheet or strip, pickled and oiled, in thicknesses ranging from 0.083 to 0.128 inch, and in 48 or 60 inch master coils, or slit to widths ranging from 1.0 to 7.0 inches.

Any party interested in commenting on these requests should send written comments as soon as possible, and no later than July 11, 1988. Comments

should focus on the economic factors involved in granting or denying these requests.

Commerce will maintain these requests and all comments in public files. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public files will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address.

Jan W. Mares,

Assistant Secretary for Import Administration.

June 24, 1988.

[FR Doc. 88-14659 Filed 6-28-88; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

[Transmittal No. 06-10-89001-01; Project I.D. No. 06-10-89001-01]

Austin Minority Business Development Center (MBDC)

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $194,118 for the project's performance period of December 1, 1988 to November 30, 1989. The MBDC will operate in the Austin Standard Metropolitan Statistical Area (SMSA).

The first year's cost for the MBDC will consist of:

Name	Federal	Non-Federal	Total
Austin SMSA.....	$165,000	[1] $29,118	$194,118

[1] Can be a combination of cash, in-kind contribution and fees for service.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designated to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with period reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability or funds, and Agency priorities.

DATE: Closing Date: The closing date for receipt of application is August 8, 1988.

ADDRESS: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242-0790.

FOR FURTHER INFORMATION, CONTACT: Deselene Crenshaw, Business Development Clerk, Dallas Regional Office, 214/767-8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

A pre-bid conference will be held in Dallas on July 15, 1988 at 1:00 pm. Conference site information may be obtained by contacting the individual designated above.

Melda Cabrera,

Regional Director, Minority Business Development Agency, Dallas Regional Office.

Section B—Project Specifications

(To be completed by the Regional Offices)

Project Identification

1. Program Number and Title: 11.800 minority Business Development.
2. Project Name: Austin, MBDC.
3. Project Identification Number: 06-10-89001-01.

Budget Period Duration

1. Budget Period (Check One): First ___ Second ___ Third ___.
2. Start Date: December 1, 1988.
3. End Date: November 30, 1989.
4. Budget Period Duration (Months): Twelve Months.

Project Cost

1. Required Federal Funding Level: $165,000.00.
2. Minimum Non-Federal Contribution: $29,118.00.
3. Total Project Cost: $194,118.00.

Project Minimum Performance Goal Levels

1. Combined Financial Package and Procurement Minimum Goal Level: $10,670,000.00.
2. Billable $M&TA Minimum Goal Level: $100,000.00.
3. Number of Clients Minimum Goals Level: 80.

Other Project Specifications

1. Closing Date for Submission of this Application: August 8, 1988.
2. *Geographic Specification:* The Minority Business Development Center shall offer assistance in the geographic area of: Austin, Texas SMSA.
3. *Eligibility Criteria:* There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.
4. *Budget Period:* The competitive award period will be for approximately three (3) years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance and Agency priorities.

[FR Doc. 88-14619 Filed 6-28-88; 8:45 am]

BILLING CODE 3510-21-M

[Transmittal No. 06-10-89002-01; Project I.D. No. 06-10-89002-01]

Brownsville Minority Business Development Center (MBDC)

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of

performance for the first twelve (12) months is estimated at $216,776 for the project's performance period of December 1, 1988 to November 30, 1989. The MBDC will operate in the Brownsville Standard Metropolitan Statistical Area (SMSA).

The first year's cost for the MBDC will consist of:

Name	Federal	Non-Federal	Total
Brownsville SMSA	$184,260	[1] $32,516	$216,776

[1] Can be a combination of cash, in-kind contribution and fees for service.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishments and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements include in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for receipt of application is August 8, 1988.

ADDRESS: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242–0790.

FOR FURTHER INFORMATION CONTACT: Deselene Crenshaw, Business Development Clerk, Dallas Regional Office, 214/767–8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

A pre-bid conference will be held in Dallas on July 15, 1988 at 1:00 PM. Conference site information may be obtained by contracting the individual designated above.

Melda Cabrera,

Regional Director, Minority Business Development Agency, Dallas Regional Office.

Section B—Project Specifications

(To be completed by the Regional Offices)

Project Identification

1. Program Number and Title: 11.800 Minority Business Development.
2. Project Name: Brownsville, MBDC.
3. Project Identification Number: 06–10–89002–01.

Budget Period Duration

1. Budget Period (Check One): First ____ Second ____ Third ____.
2. Start Date: December 1, 1988.
3. End Date: November 30, 1988.
4. Budget Period Duration (Months): Twelve Months.

Project Cost

1. Required Federal Funding Level: $184,260.00.
2. Minimum Non-Federal Contribution: $32,516.00.
3. Total Project Cost: $216,776.00.

Project Minimum Performance Goal Levels

1. Combined Financial Package and Procurement Minimum Goal Level: $11,920,000.000.
2. Billable M&TA Minimum Goal Level: $112,000.00.
3. Number of Clients Minimum Goal Level: 89.

Other Project Specifications

1. Closing Date for Submission of this Application: August 8, 1988.
2. *Geographical Specification:* The Minority Business Development Center shall offer assistance in the geographic area of:
3. *Eligibility Criteria:* There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.
4. *Budget Period:* The competitive award period will be for approximately three (3) years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance and Agency priorities.

[FR Doc. 88–14620 Filed 6–28–88; 8:45 am]

BILLING CODE 3510–25–M

[Transmittal No. 06–10–89003–01; Project I.D. No. 06–10–89003–01]

Corpus Christi Minority Business Development Center (MBDC)

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $216,776 for the project's performance period of December 1, 1988 to November 30, 1989. The MBDC will operate in the Corpus Christi Standard Metropolitan Statistical Area (SMSA).

The first year's cost for the MBDC will consist of:

Name	Federal	Non-Federal	Total
Corpus Christi SMSA	$184,260	[1] $32,516	$216,776

[1] Can be a combination of cash, in-kind contribution and fees for service.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a

conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

DATE: Closing Date: The closing date for receipt of application is August 8, 1988.

ADDRESS: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242–0790.

FOR FURTHER INFORMATION, CONTACT: Deselene Crenshaw, Business Development Clerk, Dallas Regional Office, 214/767–8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

A pre-bid conference will be held in Dallas on July 15, 1988 at 1:00 PM. Conference site information may be obtained by contacting the individual designated above.

Melda Cabrera,

Regional Director, Minority Business Development Agency, Dallas Regional Office.

Section B—Project Specifications

(To be completed by the Regional Offices)

Project Identification

1. Program Number and Title: 11.800 Minority Business Development.
2. Project Name: Corpus Christi, MBDC.
3. Project Identification Number: 06–10–89003–01.

Budget Period Duration

1. Budget Period (Check One): First __ Second __ Third __.
2. Start Date: December 1, 1988.
3. End Date: November 30, 1988.
4. Budget Period Duration (Months): Twelve Months.

Project Cost

1. Required Federal Funding Level: $184,260.00.
2. Minimum Non-Federal Contribution: $32,516.00.
3. Total Project Cost: $216,776.00.

Project Minimum Performance Goal Levels

1. Combined Financial Package and Procurement Minimum Goal Level: $11,920,000.00.
2. Billable SM&TA Minimum Goal Level: $112,000.00.
3. Number of Clients Minimum Goal Level: 89.

Other Project Specifications

1. Closing Date for Submission of this Application: August 8, 1988.
2. *Geographic Specification:* The Minority Business Development Center shall offer assistance in the geographic area of: Corpus Christi, Texas SMSA.
3. *Eligibility Criteria:* There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian Tribes and educational institutions.
4. *Budget Period.* The competitive award period will be for approximately three (3) years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon he availability of funds, the MBDC's performance and Agency priorities.

[FR Doc. 88–14621 Filed 6–28–88; 8:45 am]

BILLING CODE 3510–25–M

[Transmittal No. 06–10–89004–01; Project I.D. No. 06–10–89004–01]

El Paso Minority Business Development Center (MBDC)

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $216,776 for the project's performance period of December 1, 1988 to November 30, 1989. The MBDC will operate in the El Paso Standard Metropolitan Statistical Area (SMSA).

The first year's cost for the MBDC will consist of:

Name	Federal	Non-Federal	Total
El Paso SMSA	$184,260	[1] $32,516	$216,776

[1] Can be a combination of cash, in-kind contribution and fees for service.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

DATE: Closing Date: The closing date for receipt of application is August 8, 1988.

ADDRESS: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, TX 75242–0790.

FOR FURTHER INFORMATION CONTACT: Deselene Crenshaw, Business Development Clerk, Dallas Regional Office, 214/767–8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

A pre-bid conference will be held in Dallas on July 15, 1988 at 1:00 PM. Conference site information may be obtained by contacting the individual designated above.

Melda Cabrera,

Regional Director, Minority Business Development Agency, Dallas Regional Office.

Section B—Project Specifications

(To be completed by the Regional Offices)

Project Identification

1. Program Number and Title: 11.800 Minority Business Development.
2. Project Name: El Paso, MBDC.
3. Project Identification Number: 06–10–89004–01.

Budget Period Duration

1. Budget Period (Check One): First X Second ____ Third ____.
2. Start Date: December 1, 1988.
3. End Date: November 30, 1989.
4. Budget Period Duration (Months): Twelve Months.

Project Cost

1. Required Federal Funding Level: $184,260.
2. Minimum Non-Federal Contribution: $32,516.
3. Total Project Cost: $216,776.

Project Minimum Performance Goal Levels

1. Combined Financed Package and Procurement Minimum Goal Level: $11,920,000.00.
2. Billable SM&TA Minimum Goal Level: $112,000.00.
3. Number of Clients Minimum Goal Level: 89.

Other Project Specifications

1. Closing Date for Submission of this Application: August 8, 1988.
2. *Geographic Specification:* The Minority Business Development Center shall offer assistance in the geographic area of: El Paso, Texas SMSA.
3. *Eligibility Criteria:* There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.
4. *Budget Period:* The competitive award period will be for approximately three (3) years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The MBDC will receive continuing funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance and Agency priorities.

[FR Doc. 88–14622 Filed 6–28–88; 8:45 am]
BILLING CODE 3510–13–M

[Transmittal No. 06–10–89005–01; Project I.D. No. 06–10–89005–01]

Laredo Minority Business Development Center (MBDC)

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $194,118 for the project's performance period of December 1, 1988 to November 30, 1989. The MBDC will operate in the Laredo Standard Metropolitan Statistical Area (SMSA).

The first year's cost for the MBDC will consist of:

Name	Federal	Non-Federal	Total
Laredo SMSA.....	$194,118	[1] $29,118	$194,118

[1] Can be a combination of cash, in-kind contribution and fees for service.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

DATE: Closing Date: The closing date for receipt of application is August 8, 1988.

ADDRESS: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, TX 75242–0790.

FOR FURTHER INFORMATION, CONTACT: Deselene Crenshaw, Business Development Clerk, Dallas Regional Office, 214/767–8001.

SUPPLEMENTARY INFORMAITON: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

A pre-bid conference will be held in Dallas on July 15, 1988 at 1:00 PM. Conference site information may be obtained by contacting the individual designated above.

Melda Cabrera,

Regional Director, Minority Business Development Agency, Dallas Regional Office.

Section B—Project Specifications

(To be completed by the Regional Offices)

Project Identification

1. Program Number and Title: 11.800 Minority Business Development.
2. Project Name: Laredo, MBDC.
3. Project Identification Number: 06–10–89005–01.

Budget Period Duration

1. Budget Period (Check One): First X Second ____ Third ____.
2. Start Date: December 1, 1988.
3. End Date: November 30, 1989.
4. Budget Period Duration (Months): Twelve Months.

Project Cost

1. Required Federal Funding Level: $165,000.00.
2. Minimum Non-Federal Contribution: $29,118.00.
3. Total Project Cost: $194,118.00.

Project Minimum Performance Coal Levels

1. Combined Financial Package and Procurement Minimum Goal Level: $10,670,000.00.

2. Billable M&TA Minimum Goal Level: $100,000.00.

3. Number of Clients Minimum Goal Level: 80.

Other project Specifications

1. Closing Date for Submission of this Application: August 8, 1988.

2. Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of: El Paso, Texas SMSA.

3. *Eligibility Criteria:* There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.

4. **Budget Period:** The competitive award period will be for approximately three (3) years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance and Agency priorities.

[FR Doc. 88-14623 Filed 6-28-88; 8:45 am]

BILLING CODE 3510-25-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Permitting Entry of Certain Cotton Textile Products Produced or Manufactured in Sri Lanka

June 24, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner or Customs permitting entry of certain shipments.

EFFECTIVE DATE: July 5, 1988.

Authority: E.O. Order 11651 of March 3, 1972, as amended; Sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION: Shipments of Category 348, exported during the period June 1, 1987 through May 31, 1988, will be permitted entry if accompanied by a valid export visa issued by the Government of Sri Lanka on or after June 8, 1988.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987.) Also see 53 FR 12053, published on April 12, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 24, 1988

Commissioner of Customs,

Department of the Treasury Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on April 7, 1988 from the Chairman, Committee for the Implementation of Textile Agreements, which directed you to prohibit entry into the United States of cotton textile products in Category 348, produced or manufactured in Sri Lanka and exported during the period June 1, 1987 through May 31, 1988 for which the Government of Sri Lanka has issued an export visa. Visa waivers were required for these shipments.

Effective on July 5, 1988, you are directed to permit entry of shipments of Category 348, exported during the period June 1, 1987 through May 31, 1988, which are accompanied by an export visa issued by the Government of Sri Lanka on or after June 8, 1988.

Visa waivers shall continue to be required for shipments of Category 348, exported during the period June 1, 1987 through May 31, 1988, which are accompanied by visas by the Government of Sri Lanka prior of June 8, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-14632 Filed 6-28-88; 8:45 am]

BILLING CODE 3510-DR-M

Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

June 24, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for a new agreement year.

EFFECTIVE DATE: July 1, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9480. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: A copy of the current Bilateral Textile Agreement between the Governments of the United States and Indonesia is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998. For the July 1, 1988 through June 30, 1989 period, the limits for certain categories include an additional 5 percent for traditional folklore products made of handloomed fabrics, as provided for in the agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the correlation: Textile and Apparel Categories with Proposed Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 24, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement effected by exchange of notes dated September 25 and October 3, 1985, as amended, between the Governments of the United States and the

Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Indonesia and exported during the twelve-month period which begins on July 1, 1988 and extends through June 30, 1989, in excess of the following levels of restraint:

Category	12-Mo restraint limit
Group I:	
219, 313-315, 317/617/326, 331, 334-337, 338/339, 340, 341, 347/348, 351, 369-S [1], 445/446, 604-A [2], 613/614/615, 625/626, 631-W [3], 635, 638/639, 640, 641, 645/646, 647 and 648, as a group.	278, 895, 817 square yards equivalent.
Sublevels in Group I:	
219	6,887,961 square yards.
313	11,046,543 square yards.
314	38,571,765 square yards.
315	17,973,120 square yards.
317/617/326	17,141,030 square yards.
331	476,406 dozen pairs.
334	33,349 dozen.
335	85,753 dozen.
336	81,287 dozen.
337	89,326 dozen.
338/339	643,149 dozen.
340	440,676 dozen.
341	500,226 dozen.
347/348	833,711 dozen.
351	131,012 dozen.
369-S	1,071,914 pounds.
445/446	51,515 dozen.
604-A	833,711 pounds.
613/614/615	15,233,045 square yards.
625/626	16,806,801 square yards.
631-W	774,160 dozen pairs.
635	89,326 dozen.
638/639	821,601 dozen.
640	435,895 dozen.
641	1,268,092 dozen.
645/646	416,856 dozen.
647	520,819 dozen.
648	1,266,463 dozen.
Group II:	
200, 201, 218, 220, 222-227, 229, 239, 300, 301, 330, 332, 333, 342/642, 345, 349, 350, 352-354, 359, 360-369, 369-D [4], 369-O [5], 400-444, 447-469, 600, 603, 604-O [6], 606, 607, 611, 618-622, 624, 627-629, 630, 631-O [7], 632-634, 636, 637, 643, 644, 649, 650, 651, 652-654, 659, 665, 666, 669, 670, 831-836, 838, 840, 842-847, 850-852, 858 and 859, as a group.	71,879,645 square yards equivalent.
Sublevels in Group II:	
342/642	188,766 dozen.
345	230,338 dozen.
350	68,427 dozen.
369-D	955,060 pounds.
636	247,754 dozen.
637	146,068 dozen.
651	121,518 dozen.
Subgroup of Group II: 400-444 and 447-469, as a group.	3,243,918 square yards equivalent.

[1] In Category 369-S, only TSUSA number 366.2840.
[2] In Category 604-A, only TSUSA numbers 310.5049 and 310.6045.
[3] In Category 631-W, only TSUSA numbers 704.3215, 704.8525, 704.8550 and 704.9000.
[4] In Category 369-D, only TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.
[5] In Category 369-O, all TSUSA numbers except 366.2840 in Category 369-S and 365.6615, 366.1720, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860 in Category 369-D.
[6] In Category 604-O, all TSUSA numbers except 310.5049 and 310.6045 in Category 604-A.
[7] In Category 631-O, all TSUSA numbers except 704.3215, 704.8525, 704.8550 and 704.9000 in Category 631-W.

Imports charged to these category limits for the periods July 1, 1987 through December 31, 1987 and January 1, 1988 through June 30, 1988 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The foregoing limits may be adjusted in the future under the provisions of the current bilateral agreement between the Governments of the United States and Indonesia.

The conversion factor for Categories 638/639 is 15.5.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-14629 Filed 6-28-88; 8:45 am]

BILLING CODE 3510-DR-M

Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

June 24, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 30, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9480. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limits for Groups I and II and Categories 315 and 625/626 are being increased for carryover, and the limit for Group II is also being increased for swing. The limit for Group I is being reduced accordingly. The limits for the July 1, 1987 through December 31, 1987 period are being reduced accordingly (the limit for Category 614 was adjusted in a previous directive).

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 24504, published on July 1, 1987; 52 FR 49465 and 52 FR 49468, published on December 31, 1987; and 53 FR 11327, published on April 6, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 24, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives issued to you on December 28, 1987, by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the periods which began on July 1, 1987 and extended through December 31, 1987 and January 1, 1988 and extends through June 30, 1988.

Effective on June 30, 1988, the directives of December 28, 1987 are hereby amended to

adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Indonesia.

Category	Adjusted 6-mo limit [1] July 1, 1987–Dec. 31, 1987
Group I	110,104,632 square yards equivalent.
Sublevel in Group I:	
315	7,985,483 square yards.
Group II	31,970,275 square yards equivalent.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1987

Category Group I:	Adjusted 6-mo limit,[1] Jan. 1, 1988—June 30, 1988
219, 313–315, 317/617/326. 331, 334–337, 338/339, 340, 341, 347/348, 351, 369–S[2], 445/446, 604–A[3], 613/614/615, 625/626, 631–W[4], 635, 638/639, 640, 641, 645/646, 647 and 648, as a group.	148,992,019 square yards equivalent.
Sublevels in Group I:	
315	9,425,024 square yards.
625/626	11,511,502 square yards.
Group II:	
200–218, 220–239, 300, 301, 330, 332, 333, 342/642, 345, 349, 350, 352–354, 359–363, 369–D[5], 369–0[6], 400–444, 447–469, 600–603, 604–0[7], 606, 607, 611, 618–624, 627–630, 631–0[8], 632–634, 636, 637, 642–644, 649–654, 659–670 and 831–859, as a group.	37,387,467 square yards equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.
[2] In Category 369–S, only TSUSA number 366.2840.
[3] In Category 604–S, only TSUSA numbers 310.5049 and 310.6045.
[4] In Category 631–W, only TSUSA numbers 704.3215, 704.8525, 704.8550 and 704.9000.
[5] In Category 369–D, only TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.
[6] In Category 369–0, all TSUSA numbers except 365.6615, 366.1720, 366.1740, 366.2020, 366,2040, 366.2420, 366.2440 and 366.2860 in Category 369–D; and 366.2840 in Category 369–S.
[7] In Category 604–0, all TSUSA numbers except 310.5049 and 310.6045.
[8] In Category 631–0, all TSUSA numbers except 704.3215, 704.8525, 704.8550 and 704.9000.

Goods exported in excess of the adjusted limits for the July 1, 1987 through December 31, 1987 period shall be charged to the corresponding limits of January 1, 1988 through June 30, 1988 period.

The Committee for the Implementation of the Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–14630 Filed 6–28–88; 8:45am]

BILLING CODE 3510–DR–M

Amendment and Adjustment of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Uruguay

June 24, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending and adjusting limits.

EFFECTIVE DATE: June 30, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended: section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: In conformity with the interim category system, the current limits for Categories 335, 433, 434, 435 and 442 are being adjusted under the bilateral agreement. These limits are being further adjusted for 100 percent carryover from the July 1, 1987 through December 31, 1987 period. In addition, Categories 335 and 410 are being increased by application of swing, reducing the limits for Categories 442 and 434, respectively, to account for the swing being applied.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 52 FR 46820, published on December 10, 1987; 52 FR 48855, published on December 28, 1987; and 53 FR 2524, published on January 28, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 24, 1988

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives of December 4, 1987, December 21, 1987 and January 25, 1988 concerning imports of certain cotton and wool apparel, produced or manufactured in Uruguay and exported during the periods which began, in the case of Categories 335, 433, 434, 435 and 442, on July 1, 1987 and extended through December 31, 1987 and on January 1, 1988 and extends through June 30, 1988; and, in the case of Category 410, on February 1, 1988 and extends through January 31, 1989.

Effective on June 30, 1988 the directives of December 4, 1987, December 21, 1987 and January 25, 1988 are amended to include amendments and adjustments to the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Uruguay.

Category	Adjusted limit [1] (July 1, 1987–Dec. 31, 1987)
433	4,744 dozen.
434	1,839 dozen.
435	11,726 dozen.
442	4,686 dozen.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1987

Category	Adjusted limit [1] (Jan. 1, 1988–June. 30, 1988)
335	33,516 dozen.
433	10,506 dozen.
434	18,384 dozen.
435	31,274 dozen.
442	13,633 dozen.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1988.

Category	Adjusted limit [1] (Feb. 1, 1988–Jan. 31, 1989)
410	2,292,165 square yards.

[1] The limits has not been adjusted to account for any imports exported after January 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 88-14631 Filed 6-28-88; 8:45 am]
BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket 88-C0004]

Futon Designs, Inc., a Corporation, and Donald J. Biwer, Individually and as an Officer of the Corporation; Provisional Acceptance of a Settlement Agreement

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Flammable Fabrics Act.

SUMMARY: Under requirements of 16 CFR 1605.13, the Commission must publish in the **Federal Register** consent agreements which it provisionally accepts under the Flammable Fabrics Act. Published below is a provisionally-accepted Settlement Agreement with Futon Designs, Inc., a corporation, and Donald J. Biwer, individually and as an officer of the corporation.

DATE: Any interested person may ask the Commission not to accept this agreement by filing a written request with the Office of the Secretary by July 14, 1988.

ADDRESS: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Earl A. Gershenow, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6626.

SUPPLEMENTARY INFORMATION:

Dated: June 23, 1988.

Sheldon D. Butts,
Deputy Secretary

Complaint

In the matter of Futon Designs, Inc., a corporation, and Donald J. Biwer, individually and as an officer of Futon Designs, Inc.; CPSC Docket No. 88-C0004.

The staff of the Consumer Product Safety Commission believes that Futon Designs, Inc., a corporation (hereinafter, "Respondent"), is subject to and has violated provisions of the Flammable Fabrics Act, as amended, (15 U.S.C. 1191 *et seq.*; hereinafter, the "FFA"); the Federal Trade Commission Act, as amended, (15 U.S.C. 41 *et seq.*; hereinafter, the "FTCA"); and the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72, amended), 16 CFR Part 1632 (hereinafter, the "Mattress Standard").

It appears to the Commission from the information available to its staff that it is in the public interest to issue this complaint. Therefore, by virtue of the authority vested in the Commission by section 30(b) of the Consumer Product Safety Act, as amended, (15 U.S.C. 2079(b); hereinafter, the "CPSA") the Commission pursuant to sections 3 and 5 of the FFA, 15 U.S.C. 1192 and 1194, and section 5 of the FTCA, 15 U.S.C. 45, and in accordance with the Commission's Rules of Practice for Adjudicative Proceedings, 16 CFR Part 1025, hereby issues this complaint and states the staff's charges as follows:

1. Respondent Futon Designs, Inc. (hereinafter, "Futon Designs") is a corporation organized and existing under the laws of the state of Minnesota.

2. Respondent Donald J. Biwer is an officer of Futon Designs; and as such, he formulates, directs, and controls the acts, practices, and policies of Futon Designs.

3. Respondents' principal place of business is located at 800 W. Altgeld, Chicago, Illinois 60614.

4. Respondents are engaged in the manufacturing for sale, sale and offering for sale, in commerce, and has introduced, delivered for introduction, transported and caused to be transported in commerce, and has sold or delivered after sale or shipment in commerce, as the term "commerce" is defined in section 2(b) of the FFA, 15 U.S.C. 1191(b), futon mattresses.

5. Each futon mattress identified in paragraph 4 of the complaint is comprised of "ticking" that is made with 100 percent cotton, and a "batting" that is made with 100 percent cotton; and is intended or promoted for sleeping upon.

6. Each Futon mattress identified in paragraph 4 of the complaint is, therefore:

(a) A "mattress" within the meaning of § 1632.1(a) of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72, amended), 16 CFR 1632.1(a); and

(b) An "interior furnishing" and a "product" as these terms are defined in sections 2(e) and (h) of the Flammable Fabrics Act, as amended, 15 U.S.C. 1191(e) and (h).

7. Respondents are subject to, but have failed to comply with, the Mattress Standard in that:

a. Respondents failed to do the prototype testing required by § 1632.3 of the Mattress Standard, 16 CFR 1632.3; and,

b. Respondents failed to maintain the manufacturing or test specification or test records required by § 1632.31(c) of the Mattress Standard, 16 CFR 1632.31(c).

8. The acts by Respondents set forth in paragraph 7 of the complaint are unlawful and constitute an unfair method of competition and an unfair and deceptive practice in commerce under the FTCA, in violation of section 3(a) of the FFA, 15 U.S.C. 1192(a), for which a cease and desist order may be issued against Respondents pursuant to section 5(b) of the FFA, 15 U.S.C. 1194(b), and section 45 of the FTCA, 15 U.S.C. 45.

Wherefore, the premises considered, the Commission hereby issues this Complaint on the 23rd day of June, 1988, in which the staff seeks an Order to Cease and Desist future violations of the FFA.

By direction of the Commission.

David Schmeltzer,
Associate Executive Director, Directorate for Compliance and Administrative Litigation.

Dated: June 23, 1988.

Consent Order Agreement

In the matter of Futon Designs, Inc., a corporation, and Donald J. Biwer, individually and as an officer of Futon Designs, Inc.; CPSC Docket No. 88-C0004.

Futon Designs, Inc., and Donald J. Biwer, President of Futon Designs, Inc. (hereinafter, "Respondents"), 800 W. Altgeld, Chicago, Illinois 60614, a corporation, enter into this Consent Order Agreement (hereinafter, "Agreement") with the staff (hereinafter, the "staff") of the Consumer Product Safety Commission (Commission) pursuant to the procedure for Consent Order Agreements contained in § 1605.13 of the Commission's Procedures for Investigations, Inspections, and Inquires under the Flammable Fabrics Act (FFA), 16 CFR Part 1605.

This Agreement and Order are for the sole purpose of settling allegations of the staff that Respondents sold futon mattresses that are subject to, but failed to comply with, the Flammable Fabrics Act and the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72, amended) (hereinafter, the "Mattress Standard") issued thereunder, as more fully set forth in the complaint accompanying this Agreement.

Respondents and the Staff Agree:

1. The Consumer Product Safety Commission has jurisdiction in this matter under the following acts: Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*), Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*), and Federal Trade Commission Act (15 U.S.C. 41 *et seq.*).

2. Respondent Futon Designs, Inc. (hereinafter, "Futon Designs") is a corporation organized and existing under the laws of the state of Minnesota.

3. Respondent Donald J. Biwer is an officer of Futon Designs; and as such, he formulates, directs, and controls the acts, practices, and policies of Futon Designs.

4. Respondents are engaged in the manufacture and sale of futon mattresses with their principal place of business and address located at 800 W. Altgeld, Chicago Illinois 60614.

5. Respondents are now and have been engaged in one or more of the following: the manufacture for sale, the sale, or the offering for sale, in commerce, or the importation, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of a product, fabric, or related material which is subject to the requirements of the Flammable Fabrics Act, 15 U.S.C. 1191 *et seq.*, and the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632.

6. This Agreement is for settlement purposes only, does not constitute an admission by Respondents that either of them have violated the law, and becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon the Respondent.

7. Each Respondent waives (a) all requirements for findings of fact and conclusions of law in the disposition of this matter, and (b) administrative and judicial review of the facts and proceedings.

8. The requirements of this Order are in addition to, and not to the exclusion of, other remedies such as criminal penalties which may be pursued under section 7 of the FFA, 15 U.S.C. 1196.

9. Violation of the provisions of the Order may subject each Respondent to a civil penalty for each such violation, as determined by a court of law or other adjudicative authority, as prescribed by law.

10. The Commission may disclose the terms of this Consent Order Agreement.

11. This Agreement and the Complaint accompanying the Agreement may be used in interpreting the Order.

12. No agreement, understanding, representation or interpretation not contained in this Agreement or Order may be used to vary or contradict the terms of the Order.

Upon acceptance of this Agreement, the Commission may issue the following Order:

Order

I

It is hereby ordered that Respondents, the successors and assigns, agents, representatives, and employees of the Respondents, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality, do forthwith cease and desist from selling or offering for sale, in commerce, or manufacturing for sale, in commerce, or importing into the United States or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric or related material which fails to conform to the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632.

II

It is further ordered that Respondents conduct prototype testing for each futon mattress design, prior to production, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632.

III

It is further ordered that Respondents prepare and maintain written records of the prototype testing specified in paragraph II of this Order for each futon mattress design, including photographs of the tested futon mattresses, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632.

IV

It is further ordered that Respondents prepare and maintain a written record of the manufacturing specifications of each futon mattress prototype in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632.

V

It is further ordered that Respondents conduct prototype testing or, if appropriate, obtain supplier certification to support any substitution of materials after prototype testing, in accordance with all applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632.

VI

It is further ordered that Respondents prepare and maintain a written record of the manufacturing specifications of any new ticking or tape edge material substituted for those used in the original prototype testing, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632.

VII

It is further ordered that Respondents prepare and maintain all other records required by the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632, including:

(a) Records to support any determination that a particular material other than ticking or tape edge material did not influence ignition resistance;

(b) Ticking classification test results or a certification from the ticking supplier;

(c) Tape edge substitution test results;

(d) Photographs of any futon mattress tested for purposes of making a tape edge substitution; And

(e) Records describing the disposition of all failing or rejected prototype futon mattresses.

VIII

It is further ordered that Respondents shall forthwith distribute a copy of this Order to each of its operating divisions.

IX

It is further ordered that Respondents shall within sixty (60) days after service upon them of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

X

It is further ordered that for a period of ten (10) years from the date this Order becomes final within the meaning of the Federal Trade Commission Act, Respondents notify the Commission at least thirty (30) days prior to any proposed change in the way Respondent does business which may affect either of their compliance obligations arising out of this Order.

XI

It is further ordered that the Consent Order Agreement is provisionally accepted pursuant to 16 CFR 1605.13, and shall be placed on the public record, and the Commission shall announce provisional acceptance of the Consent

Order Agreement in the Commission's Public Calendar and in the **Federal Register.**

Any agreement, understanding, representation, or interpretation that is not contained in this Agreement and in the incorporated Order may not be used to vary or contradict the terms of the Order subsequently issued by the Commission.

Signed this 31st day of March, 1988.

Donald Biwer,

Individually and as an Officer of Futon Designs, Inc., Futon Designs, Inc., 800 W. Altgeld, Chicago, Illinois 60614.

David Schmeltzer,

Associate Executive Director, Directorate for Compliance and Administrative Litigation.

Alan H. Schoem,

Acting Director, Division of Administrative Litigation.

Earl A. Gershenow,

Trial Attorney, Division of Administrative Litigation, Counsel for the Commission Staff, Consumer Product Safety Commission, Washington, DC 20207.

In the matter of Futon Designs, Inc., a corporation, and Donald J. Biwer, individually and as an officer of Futon Designs, Inc.; CPSC Docket No. 88–C0004.

Order and Decision

The Commission having determined to issue a complaint charging Respondents with violations of the Flammable Fabrics Act, as amended, 15 U.S.C. 1191 *et seq.*, and of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and Respondents having been served with notice of that determination and with a copy of the complaint the Commission intends to issue, together with a proposed form of order; and

The Respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the Respondents of all jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the complaint, and all other requirements for consent order agreements set forth in § 1605.13 of the Commission's Rules for Investigations, Inspections and Inquiries Pursuant to the Flammable Fabrics Act, 16 CFR 1605.13, having been satisfied; and

The Commission having considered the agreement containing a consent order submitted by Respondents and the Commission staff, the Commission hereby issues its complaint in the form contemplated by that agreement, makes the following jurisdictional findings, and enters the following order:

Jurisdictional Findings

1. Respondent Futon Designs, Inc. (hereinafter, "Futon Designs") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its principal place of business located at 800 W. Altgeld, Chicago, Illinois.

2. Respondent Donald J. Biwer is an officer of Futon Designs; and as such, he formulates, directs, and controls the acts, practices, and policies of Futon Designs.

3. The Consumer Product Safety Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

Order

I

It is hereby ordered that Respondents, the successors and assigns, agents, representatives, and employees of the Respondents, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality, do forthwith cease and desist from selling or offering for sale, in commerce, or manufacturing for sale, in commerce, or importing into the United States or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric or related material which fails to conform to the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632.

II

It is further ordered that Respondents conduct prototype testing for each futon mattress design, prior to production, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632.

III

It is further ordered that Respondents prepare and maintain written records of the prototype testing specified in paragraph II of this Order for each futon mattress design, including photographs of the tested futon mattresses, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632.

IV

It is further ordered that Respondents prepare and maintain a written record of the manufacturing specifications of each futon mattress prototype in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632.

V

It is further ordered that Respondents conduct prototype testing or, if appropriate, obtain supplier certification to support any substitution of materials after prototype testing, in accordance with all applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632.

VI

It is further ordered that Respondents prepare and maintain a written record of the manufacturing specifications of any new ticking or tape edge material substituted for those used in the original prototype testing, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632.

VII

It is further ordered that Respondents prepare and maintain all other records required by the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632, standard including:

(a) Records to support any determination that a particular material other than ticking or tape edge material did not influence ignition resistance;

(b) Ticking classification test results or a certification from the ticking supplier;

(c) Tape edge substitution test results;

(d) Photographs of any futon mattress tested for purposes of making a tape edge substitution; and

(e) Records describing the disposition of all failing or rejected prototype futon mattresses.

VIII

It is further ordered that Respondents shall forthwith distribute a copy of this Order to each of its operating divisions.

IX

It is further ordered that Respondents shall within sixty (60) days after service upon them of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

X

It is further ordered that for a period of ten (10) years from the date this Order becomes final within the meaning of the Federal Trade Commission Act, Respondents notify the Commission at least thirty (30) days prior to any proposed change in the way Respondent does business which may affect its

compliance obligations arising out of this Order.

XI

It is further ordered that the Consent Order Agreement is provisionally accepted pursuant to 16 CFR 1605.13, and shall be placed on the public record, and the Commission shall announce provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the **Federal Register.**

So ordered by the Commission, this 23rd day of June, 1987.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 88-14618 Filed 6-28-88; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science board (ASB).

Dates of Meeting: 18-28 July 1988.

Times of Meeting: 0800-1730 hours weekdays and as needed on weekends.

Place: National Academy of Sciences Study Center, Woods Hole, Massachusetts.

Agenda: The Army Science Board 1988 Summer Studies on Technology Insertion in Army systems and Army Testing will meet for discussions of cumulative briefings received, and to develop and write their final reports. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, US.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d).

The proprietary and nonproprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Sicence Board.

[FR Doc. 88-14668 Filed 6-28-88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Conduct of Employees; Conflict of Interests: Divestiture Requirements; Supervisory Employee Waivers

Section 602(a) of the Department of Energy Organization Act (Pub. L. 95-91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases of exceptional hardship or where the interest is a pension, insurance, or other similarly vested interest.

Dr. Edwin L. Kugler is under consideration for the position of Chemist in the Chemical Sciences Division of the Office of Basic Energy Research, Department of Energy Office of Energy Research. Dr. Kugler has an interest in the Annuity Plan of the Benefit Plan of Exxon Corporation and Participating Affiliates, as a result of his past employment with Exxon Research and Engineering Company.

It has been established to my satisfaction that requiring Dr. Kugler to divest his interests in the Annuity Plan of the Benefit Plan of Exxon Corporation and Participating Affiliates would impose an exceptional hardship on him, and that such interests are vested pension interests within the meaning of section 602(c) of the Act. Accordingly, I have granted Dr. Kugler a waiver of the divestiture requirements of section 602(a) of the Act, for the duration of his employment with the Department, with respect to his interests in the Annuity Plan of the Benefit Plan of Exxon Corporation and Participating Affiliates.

In accordance with section 208, title 18, United States Code. Dr. Kugler will be directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon Exxon Corporation unless his supervisor and the Counselor agree that the financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of him.

Dated: June 22, 1988.

John S. Herrington,

Secretary of Energy.

[FR Doc. 88-14651 Filed 6-28-88; 8:45 am]

BILLING CODE 6450-01-M

Savannah River Operations, Financial Assistance Award; Restriction of Eligibility for Grant Award

AGENCY: Department of Energy.

ACTION: Notice of restriction of Eligibility for grant award.

SUMMARY: DOE announces that it plans to award a grant to the University of South Carolina-Aiken (USC-A), in the amount of $700,000 for purchase of laboratory equipment for the new science building under construction on the USC-A campus. Pursuant to § 600.7(b) of the Financial Assistance Rules, 10 CFR Part 600, DOE has determined that eligibility for this grant award shall be limited to the University of South Carolina-Aiken.

Procurment Request Number: 09-88SR18042.000

Project Scope: The Conference Report to the FY 1988 Continuing Resolution, designated Pub. L. 100-202, dated December 22, 1987, directed the Department of Energy, Savannah River Operations Office, provide funds to USC-A for the purpose of purchasing laboratory equipment for a new science building.

It is the desire of the DOE to assist in providing laboratory equipment to benefit the students and faculty, and to increase the numbers and enhance the quality of students for a national science and technical labor pool. The equipment will be used for scientific and technological programs which should generate a pool of recruitable graduates suitable for future employment at DOE's Savannah River Plant, and for other government agencies, state agencies and the private sector.

The DOE has determined that this award to the USC-A on a restricted eligibility basis is appropriate.

FOR FURTHUR INFORMATION CONTACT: Ronald D. Simpson, Chief, Contracts and Procurement Branch, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801, *Telephone:* (803) 725-2096.

Issued in Aiken, SC, on June 16, 1988.

P.W. Kaspar,

Manager, Savannah River Operations Office.

[FR Doc. 88-14654 Filed 6-28-88; 8:45 am]

BILLING CODE 6450-01-M

Availability of the Draft 1988 Mission Plan Amendment for the Civilian Radioactive Waste Management Program for Public Review and Comment

Section 301 of the Nuclear Waste Policy Act of 1982 (NWPA, Pub. L. 97-

425) requires the Secretary of Energy to "* * * prepare a comprehensive report, to be known as the Mission Plan, which shall provide an informational basis sufficient to permit informed decisions to be made in carrying out the repository program and the research, development, and demonstration programs required under this Act." The NWPA further required the Secretary to submit a draft Mission Plan to the States, the affected Indian Tribes, the Nuclear Regulatory Commission (NRC), and other Federal agencies for their comments.

After incorporating changes in response to comments received on a draft version of the Plan, the Department of Energy (DOE) prepared and submitted the Mission Plan (DOE/RW-005, June 1985) to Congress.

In preparing the Mission Plan, the Department recognized that this information base would change over time, requiring the Mission Plan to be revised. The first such revision was an Amendment to apprise the Congress, the affected States and Indian Tribes, other Federal agencies, and the public, of significant development and new information in the Civilian Radioactive Waste Management Program. This included: Significant recent achievements in the waste management program; the revised schedule for the first repository; and the intent to postpone site-specific work for the second repository. After incorporating changes in response to comments received on a draft version of this Amendment, the Department prepared and submitted the Office of Civilian Radioactive Waste Management's Mission Plan Amendment (DOE/RW-0128, June 1987) to Congress.

As a result of the passage of the Nuclear Waste Policy Amendments Act of 1987 (Amendments Act, Pub. L. 100-203), the Department determined that another amendment to the Mission Plan is necessary. This draft 1988 Mission Plan Amendment has been prepared by the Department so that, when finalized, it will inform the Congress of the Department's plans for implementing the new focus for the Civilian Radioactive Waste Management Program that is provided by the Amendments Act. It is being transmitted to States, previously affected Indian Tribes, the Nuclear Regulatory Commission and other Federal agencies, and the public for comment. In light of the Amendments Act, it is also being transmitted to affected units of local government. Comments have been requested by August 29, 1988.

The Amendments Act streamlines and focuses the waste management program established by the NWPA. In terms of the Department's strategies and plans for program implementation, the most significant provisions are the following:

- Site characterization for the first repository is limited to one site (Yucca Mountain in Nevada);
- Site characterization activities at other sites were to have been terminated by March 22, 1988;
- Only one repository is to be developed at present;
- A Monitored Retrievable Storage facility is authorized subject to certain conditions; and
- Several new organizational entities are established that the Department will interact with and support as requested.

Copies of the draft Amendment are being mailed for review and comment to nearly 7,000 addresses on the Civilian Radioactive Waste Management Program's mailing list who have previously expressed an interest in receiving program documents and status reports.

A copy of the draft 1988 Amendment to the Mission Plan may be obtained by contracting the Office of Civilian Radioactive Waste Management, Washington, DC, office, or any one of the offices at the following addresses:

U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Office of External Relations and Policy, RW-40, 1000 Independence Avenue, SW., Washington, DC 20585, Tel. (202) 586-5722.

Nevada Nuclear Waste Storage Investigations, Waste Management Project Office, U.S. Department of Energy, Nevada Operations Office, Phase 2, Suite 200, 101 Convention Center Drive, Las Vegas, Nevada 89109, Tel. (702) 295-8769.

Repository Technology and Transportation Division, U.S. Department of Energy, 9800 South Class Avenue, Argonne, Illinois 60439, Tel. (312) 972-2188.

Salt Repository Project Office, U.S. Department of Energy, 110 North 25 Mile Avenue, Hereford, Texas 79045, Tel. (806) 374-2320.

Richland Operations Office, U.S. Department of Energy, Federal Building, 825 Jadwin Avenue, Room 630, Richland, Washington 99352, Tel. (509) 376-7501.

A copy of the draft Amendment to the Mission Plan is also available for public inspection at the above offices as well as at the following address:

U.S. Department of Energy, Public Reading Room, Room 1E-206, 1000 Independence Avenue, SW. Washington, DC 20585.

Comments received in response to this Notice will be available for public inspection at the Public Reading Room in Washington, DC, at the address above.

Issued in Washington, DC June 23, 1988.

Charles E. Kay,

Acting Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 88-14650 Filed 6-28-88; 8:45 am]

BILLING CODE 6450-01-M

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S-EU-933, for the sale of approximately 15 grams of plutonium-240 to the Commission of the European Communities, Geèl, Belgium, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: June 22, 1988.

David B. Waller,

Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-14649 Filed 6-28-88; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Long Term Intertie Access Policy

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Issuance of BPA's long term intertie access policy and availability of administrator's decision.

SUMMARY: On May 17, 1988, BPA finalized its Long Term Intertie Access

Policy. The Long Term Intertie Access Policy defines how the portion of the Pacific Northwest-Pacific Southwest Intertie controlled by BPA will be used. The policy has been developed to enable BPA to sell surplus power and thereby assure repayment to the U.S. Treasury for the Federal investment in the Northwest's power system; to provide economical electric power to consumers in the Pacific Northwest and California by taking advantage of the differences in electric load patterns and power resources in the two regions; and to provide surplus Pacific Northwest energy to displace higher-cost California resources. Under the policy, access to the Intertie varies according to the type of power sale involved. The policy also contains provisions to limit access to the Intertie for utilities that build new projects in the Columbia River Basin that could undermine BPA's investments to improve fish and wildlife resources.

The environmental effects of the policy were analyzed in the Intertie Development and Use Environmental Impact Statement (EIS). The final EIS was issued in April 1988. The Administrator's Decision on the Long Term Intertie Access Policy, which discusses the alternatives considered by BPA in reaching its decision, is available upon request.

DATE: The policy is effective as of May 17, 1988. However, operational implementation may take up to 60 days after that date.

FOR FURTHER INFORMATION CONTACT: Mr. John Cameron, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208, telephone 503–230–3390. You may also contact BPA's Public Involvement office at 503–230–2378. Oregon callers may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59807, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98807, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 201 Queen Anne Ave., Suite 400, Seattle, Washington 98109–1030, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6225.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Thomas H. Blankenship, Boise District Manager, Room 376, 550 West Fort Street, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION:

Part I. Explanation of BPA's Long Term Intertie Access Policy

Introduction

The Pacific Northwest-Pacific Southwest Intertie began operation in 1968. Congress authorized the construction of the Intertie to provide an additional market for surplus BPA power, thereby providing greater assurance that we would repay the U.S. Treasury for the Federal investments in the Northwest's power system. To the extent there was capacity excess to Federal needs, Congress also intended that the Intertie allow non-Federal utilities in the Northwest and California to take advange of the diverse load patterns and resource types between the two regions.

The present capability of the Intertie is about 5,200 megawatts (MW), 3,200 MW on the two alternating-current (AC) lines and 2,000 MW on the direct-current (DC) line. Ownership of the Intertie in the Northwest is shared by BPA, Portland General Electric Company (PGE) and Pacific Power & Light Company (PP&L). We provide access to all Northwest generating utilities. Ownership in California is shared by four investor-owned and municipal utilities.

In the early 1980's, demand for sales over the Intertie increased dramatically. Nearly every utility in the Northwest had excess power to sell and forecasted a surplus into the next decade and beyond. Northwest utilities frequently filled the Intertie with nonfirm energy and sought to negotiate long-term transactions with California. Prior to 1984 and the implementation of the Interim Intertie Access Policy (IAP), BPA lost significant revenue opportunities by allowing other utilities unfettered access to the Intertie. Combined effects of (1) the Northwest Preference Act, 16 U.S.C. 837, *et seq.*, which gives Northwest utilities a special competitive advantage over us; (2) oversupply conditions in the Northwest; and (3) a restricted market in California due to limited ownership of the Intertie in California caused us to lose sales. We were unable to make our payments to the U.S. Treasury.

In 1984 we implemented the Interim IAP, followed by the Near-Term IAP in 1985. These policies governed access to the Intertie while we developed a Long-Term Intertie Access Policy (LTIAP).

The LTIAP accomplishes the following objectives which have guided us throughout the process:

1. The LTIAP assures BPA of reasonable access to the Intertie to sell both firm and nonfirm energy, thereby enhancing our ability to repay, with interest, $8 billion in Treasury investments.
2. The policy is a reasonable and effective means of safeguarding our $120 million investment in fish and wildlife protection.
3. It balances the competing demands of non-Federal utilities for Intertie access to sell, exchange, or purchase both firm power (through long-term contracts) and nonfirm energy (through the short-term, spot-market).
4. It provides a basis for greater planning certainty to utilities.
5. It allows for efficient use of generating resources in the Northwest and California.
6. It specifically addresses competitive concerns between California and the Northwest.
7. In doing all of the above, it strikes a balance between the Northwest and California, among generating and nongenerating utilities, other BPA customers, environmental interests and Federal taxpayers.

Issuance of this policy culminates our review of comments submitted by over 150 different utilities, regulatory agencies and interest groups. Through a combination of formal, transcribed meetings and informal discussions, we have increased our knowledge of their positions—and they of ours. We have twice appeared before the U.S. House Subcommittee on Water and Power Resources to answer questions regarding the IAP. Though often cumbersome and lengthy, the process has produced a policy which addresses the demands of all parties.

Balancing Interests

We have been put in the difficult position of balancing the competing interests for use of the Intertie. The sum of the demands placed on the Intertie far exceeds the facility's ability to meet them.

Our total-requirements customers insist that BPA should protect its

revenues in order to maintain stable power rates and to repay the U.S. Treasury in a timely manner. They suggest that BPA should allocate firm and nonfirm Intertie access to itself first, always assuring that BPA would be able to sell its surplus power. Northwest generating utilities seek a policy which allows sufficient and assured access for their own firm and nonfirm sales. California parties generally argue for a policy which allows them unconstrained access to inexpensive Northwest and Canadian resources. Environmental organizations support a policy that would prevent the Intertie from encouraging development that would harm fish and wildlife resources.

Our main concern in reaching this balanced policy has been reconciling BPA's need to meet its fiscal obligations with these other competing demands for use of the Intertie. While BPA has the discretion to implement the "Federal-first" policy supported by our full requirements customers, the LTIAP instead provides significant access to non-Federal utilities for a variety of transactions while protecting BPA from revenue shortfalls.

It is not reasonable to suggest, as California commenters did in the public process, that BPA incur revenue losses to be recovered through rate increases to its total-requirements customers. These customers have a strong statutory argument—explained in the decision—that we should adopt a Federal-first policy to maximize Federal sales over the Intertie. By rejecting Federal-first, we incur an obligation to provide these customers with rate stability through alternative means. First among these alternative protections is the reservation of Intertie capacity for BPA sales.

If the revenue-protective measures adopted in the LTIAP prove unworkable or unduly controversial, the obvious remedy is not more access for non-Federal utilities. Instead, it is Federal-first.

Formula Allocation

The Intertie accommodates transactions in two distinct markets. Sellers of power to California sell in two distinct markets, one for long-term transactions and one for short-term sales. Formula Allocation in the LTIAP refers to Intertie capacity made available for short-term sales of energy. We have taken a hard look at Formula Allocations as it has been one of the most hotly debated issues throughout the LTIAP's development.

The LTIAP continues the basic Formula Allocation method used in the Near Term Intertie Access Policy (NTIAP) of allocating access to the Intertie based on three possible conditions. We have changed the specifics of each Condition to reflect criticisms and suggestions made on the two LTIAP drafts. Provisions for Conditions 2 and 3 address directly the contentious anti- competitive concerns between California and the Northwest.

Condition 1

Condition 1 under the NTIAP incorporated the pre-existing Exportable Agreement, which expires on December 31, 1988. Parties to the agreement declare amounts of surplus energy available for export at the applicable BPA rate. If total declarations of exportable energy exceed the available Intertie Capacity or the size of the Pacific Southwest market, whichever is smaller, each party to the agreement is allocated access to the smaller amount based on its share of total declarations.

The 1986 draft LTIAP proposed that upon expiration of the Exportable Agreement a condition of spill or likelihood of spill on the Federal Columbia River Power System (FCRPS) would trigger Condition 1. BPA and Northwest Scheduling Utilities could declare surplus energy available for export and BPA would allocate access to the Intertie based on the ratio of each declaration to the sum of all declarations multiplied by the available Intertie Capacity. Each Scheduling Utility's allocation would be limited by the ratio of its regional hydroelectric capacity to the total regional hydroelectric capacity of the Scheduling Utilities multiplied by the total of all declarations (the "Hydro Cap").

We received comments on the 1986 draft which led us to revise Condition 1 to mirror the Exportable Agreement more closely. Under the 1987 draft a condition of spill or likelihood of spill on the FCRPS determined Condition 1. BPA and Scheduling Utilities could declare surplus energy available for export at the applicable BPA rate and receive a share of available Intertie Capacity based on the Hydro Cap. To the extent that the market for Northwest energy at BPA's price was less than the available Intertie Capacity, we allocated access to the Intertie to equal that market.

Generally, commenters on the 1987 draft did not argue against Condition 1 per se. They focused instead on its specific provisions. The bulk of the comments were directed at the Hydro Cap and at allocating Intertie capacity based on the size of the California market rather than the size of the Intertie capacity. In response to concerns heard at the public meetings in January 1988, we proposed an alternative Condition 1 allocation method. The LTIAP adopts this recent proposal.

The True-Up

The market for power in California is often less than the available Intertie capacity because of minimum generation requirements in California. As the Intertie is expanded and Southwest utilities bring on new generation that cannot be displaced with spot-market purchases, the frequency of this situation is likely to grow.

The 1987 draft allocated Intertie capacity based on the size of the California market as a protection against revenue shortfalls. Analyses indicated that we would lose approximately $16.4 million in 1989 by allocating to the Intertie rather than the market. This loss would decrease to $10.7 million in fiscal year 1992. Beyond 1992 the difference would increase, mainly due to projected fuel price increases.

The heart of the revenue problem is the Northwest Regional Preference Act, 16 U.S.C 837, *et seq.*, which requires BPA to quote an energy price to Northwest utilities before making any sale to the Southwest. This creates a problem in which Northwest utilities, which are BPA's competitors, know our price—but we do not know their prices. In Condition 1, where the size of the Southwest market is less than available Intertie Capacity, Northwest utilities are able to use this information to undercut the BPA price and use their allocations to reduce BPA's hourly sales to a small Southwest market. If a "real-time" BPA price interaction were even possible, we would still be required to announce our new price to the Northwest. Regional preference makes BPA a "sitting duck" for its competitors.

Allocating according to the California market size would reduce BPA's vulnerability by reducing the size of Scheduling Utility allocations. This provision came under attack, however, from both California and Northwest parties. The alternative discussed at the January 27 public meeting seemed to allay concerns regarding BPA's market control. No one disputes that the Regional Preference Act causes BPA a revenue dilemma, especially at times when we face spill on the hydro system. The true-up alternative is the least intrusive remedy.

The Hydro Cap

Both the 1986 and 1987 LTIAP drafts allocated Intertie capacity based on a utility's hydroelectric capability. The logic for the Hydro Cap was that when

the Federal system is spilling or likely to spill, the maximum allocation to utilities with greater hydroelectric resources would increase, thus decreasing the probability of wasting the resources by spilling. Under this provision, BPA's share of allocations would tend to increase due to its large hydroelectric capacity.

Much of the debate over the Hydro Cap focused on two issues. First, removing the Hydro Cap could cause hydro-based utilities to spill. Second, without the Hydro Cap utilities could "overdeclare" by including uneconomic combustion turbines in their declarations with no intent of ever operating them.

Discussion at the January meetings helped resolve these concerns. When the Federal hydro system faces spill, other systems might not always be in the same condition. The Hydro Cap could give disproportionately large shares of Intertie Capacity to hydro-based utilities when they may not face a threat of spill, while frustrating the marketing activities of utilities with hydro and thermal resources. Furthermore, several utilities and BPA indicated that if a utility is facing spill with access to market the available energy on the Intertie, such energy could generally displace Northwest thermal generation.

Several factors would help deter overdeclarations. First, the take-or-pay feature of our IS–87 transmission rate requires a utility to pay for its allocation whether or not it is used. Second, BPA monitors declarations and is aware of each utility's resources and capabilities. We have not observed significant overdeclarations under past policies. Third, from time to time we can request documentation on each utility's declaration as a further insurance against abuse.

Conditions 2 and 3

Allegations of anti-competitive practices on both the northern and southern portions of the Intertie were made during the debate over Formula Allocations. California commenters argue that pro-rata allocations to non-Federal ulitities under the LTIAP would tend to stabilize prices at levels higher than those at which sellers might increase their total sales by reducing prices. The Northwest just as logically concludes that pro-rata allocations of California Intertie capacity suppress prices below levels that would prevail in a market where more buyers independently bid for Northwest energy.

We recognized that in implementing a long-term policy we must try to resolve this issue to meet the goals outlined for the LTIAP. We therefore proposed in section 5(d) of the 1987 draft LTIAP to cease pro-rata allocations to non-Federal utilities under Conditions 2 and 3 after completion of the third AC Intertie, provided anti-competitive problems in the Southwest were cured by that time. This proposal was discussed extensively during the public meeting in January 1988 and again in comment letters, mainly from California parties. The final LTIAP takes this proposal a step further. Section 5(d) now ceases pro-rata allocations under Conditions 2 and 3 for an 18-month experimental period.

We will analyze the success or failure of the experiment throughout its term. We will be particularly concerned about the removal of restrictions on California's portion of the Intertie. Utilities, regulators, and other interested parties will be encouraged to express their views in writing and through informal discussions. At least 30 days before the experiment ends, we will issue a written report on whether to continue the experiment.

The experiment will work as follows. Under Condition 2, when the declarations of BPA and Northwest utilities exceed Intertie capacity, we will make a pro-rata allocation to BPA and leave the remaining block of Intertie capacity available to Northwest utilities as a whole. Each Northwest utility could then compete to make sales to Southwest utilities, with no assurance of any individual allocation. Under Condition 3, when the declaration of BPA and Northwest utilities are less than Intertie capacity, BPA will receive an allocation equal to its declaration and Northwest utilities will receive a block allocation equal to the sum of their declarations. After regional utilities, U.S. extraregional utilitites and then Canada have access to remaining Intertie capacity. During Condition 3, we expect significant competition whenever the size of the California market is less than Intertie capacity.

Until the experiment is in effect, Conditions 2 and 3 are similar to those in the NTIAP and the two LTIAP drafts.

The LTIAP retains pro-rata allocations under Condition 1. Allocation under Condition 1 appears to be of less concern to California commenters than allocation during other conditions. Alternative Formula Allocation proposals recognized the importance of pro-rata allocations when the Northwest faces spill conditions. Retention of Condition 1 allocations will (1) help assure non-Federal utilities of Intertie access when hydrological conditions might otherwise force them to spill, and (2) provide an enforcement mechanism for the Protected Area provisions described below.

Some commenters have suggested that we allow access to Canadian utilities equal to that of Northwest utilities. The courts, however, have upheld our policy that capacity excess to our needs must be provided on a fair and nondiscriminatory basis first to Northwest utilities. If the Free Trade Agreement between Canada and the United States now being considered in Congress and the Canadian parliament is implemented, the distincition between U.S. extraregional utilities and Canadian utilities will no longer be made.

Assured Delivery

Utilities seek firm access to the Intertie for long-term transactions. The LTIAP refers to this kind of access as Assured Delivery. The earlier NTIAP did not provide for Assured Delivery service.

Amount

The final LTIAP reserves 800 MW for Assured Delivery transactions. This is an increase from the 420 MW reserved in the 1986 draft. BPA lost $213 million in fiscal year 1987; we do not want to exacerbate this problem with the final LTIAP. Given these uncertainties, we are cautious about committing major portions of the Intertie for long-term non-Federal use.

Yet, the 800 MW upper limit in itself is a fairly dramatic departure from the past. It will facilitate a greater number and variety of firm transactions than before. Our studies indicate an annual revenue loss of approximately $9 million in lost nonfirm revenue and displaced firm power sales to our public agency customers. The revenue effects on BPA have been quantified further in a study by the Pacific Northwest Utilities Conference Committee. The adverse revenue effects, offset by mitigation measures discussed below, have been found acceptable by a fairly broad cross-section of commenters.

In the public meeting and comment letters, most parties seemed satisfied with the 800 MW if we were to consider increasing it upon completion of the Third AC project. BPA will reassess the 800 MW limit upon commercial operation or termination of the project.

Exhibit B Allocations

As for the limits on types of transactions, BPA is convinced of the wisdom of imposing limitations of firm power sales. These limits are shown in Exhibit B of the LTIAP. From the standpoints of environmental quality and financial risks, it seems appropriate

to limit Assured Delivery capacity to the amount of firm surplus presently available in the Northwest for export sales. In a change from the 1987 draft policy, the LTIAP provides that Scheduling Utilities may use their individual Exhibit B amounts for sales or exchanges.

The final LTIAP does not allocate the remaining 356 MW of Assured Delivery capacity among Scheduling Utilities. That amount will be available for exchange transactions of Scheduling Utilities on a first-come, first-served basis.

We have reached agreement (or agreement in principle) covering 341 MW of Assured Delivery service. Agreements include a 20-year 105 MW firm power sale from Montana Power Company to Los Angeles Department of Water and Power; a 41 MW firm power sale from Tacoma City Light to Western Area Power Administration (WAPA); a 45 MW firm power sale from Longview Fibre/Cowlitz County Public Utility District to WAPA; and a 20-year 150 MW seasonal exchange between The Washington Water Power Company and Pacific Gas and Electric Company. Each of these agreements accommodates our lost revenue concerns differently.

To allow for maximum use of the Intertie, a utility granted Assured Delivery may shape its firm power sale into the months of September through December by delivering up to 1.8 times its Exhibit B amount. During those fall months, spot market energy sales to the Southwest tend to be less than in the spring when the region's hydroelectric dams are more often near or in a spilling condition. If a utility shapes Assured Delivery energy into the fall, less firm energy may be shaped into remaining months of the operating year so that the total energy delivered does not exceed its annual Exhibit B energy maximum for firm sales.

BPA will also continue to work with Nonscheduling Utilities to provide the opportunity to sell the output of their generating resources over BPA's Intertie capacity.

Mitigation

Mitigation refers to conditions imposed on a utility for an Assured Delivery contract. Intertie Capacity not available to BPA because of Assured Delivery contracts executed between a Northwest utility and a Southwest utility can reduce BPA revenues and inhibit BPA's ability to make its Treasury payments. During the operating year BPA often has power available to fully load the Intertie. Assured Delivery granted under these circumstances would reduce BPA's revenues, thereby putting at risk our ability ot meet our obligations to the Treasury.

This fiscal concern is in potential conflict with the policy objective underlying the 800 MW of Assured Delivery—assisting Northwest utilities in disposing of their surpluses by means of long-term firm power sales to the Southwest. Strong objection was received from our Priority Firm Power customers to our absorbing the entire cost (lost revenues) of these transactions and the subsequent passing of the costs to them in increased rates. California and Northwest generating utilities generally tend to agree that some form of mitigation is due BPA. They question the level of compensation and what provisions for mitigation should be included in the LTIAP.

The 1986 draft of the LTIAP allowed Assured Delivery without regard to the adverse impacts on BPA's ability to sell firm power or nonfirm energy. Both the 1987 draft and the LTIAP impose mitigation upon utilities with Assured Delivery contracts. The mitigation provisions in the LTIAP provide only partial compensation for the revenue impacts resulting from transactions, but provide sufficient assurance that these transactions over the Intertie will not harm our revenue recovery.

It would be a false precision to claim that we could develop mitigation measures that offset dollar-for-dollar the losses projected in any 20-year study. Assumptions about annual rainfall, gas prices, aluminum prices, and load growth make this exercise judgmental. With this limitation in mind, the LTIAP incorporates the following mitigation provisions.

One mitigation measure requires that during any hour in which prescheduled energy sales are made under Condition 1 and Condition 2 Formula Allocation procedures, a utility must deduct its Assured Delivery amount from its Formula Allocation amount. The total amount of Intertie access granted to each utility is equal to its Formula Allocation. If a utility's Assured Delivery amount is greater than its Formula Allocation, then that utility must purchase enough energy from BPA or, during Condition 1, other Northwest utilites to make up the difference. This mitigation measure will partially offset the spot-market revenues BPA will lose by granting Assured Delivery.

Under the other mitigation measure, if BPA has invoked Condition 1 or Condition 2 Formula Allocations, cash out provisions of exchange contracts become inoperative. Cash outs allow a Northwest utility to accept dollar payments from a Southwest utility in lieu of actual energy returns. Prohibiting these during Conditions 1 and 2 has the effect of increasing the north-to-south capability of the Intertie when energy is being returned and increasing the size of the market for BPA and Schedule Utility sales.

The draft LTIAP required energy returns under seasonal exchanges to the California/Oregon border (COB) or the Nevada/Oregon border (NOB). This was initially included in the mitigation provisions for seasonal exchanges. However, BPA needs the certainty of available capacity resulting from return requirements at COB/NOB. For this reason, the final LTIAP includes this provision as a standard requirement for all exchanges rather than considering it a mitigation measure.

The LTIAP also allows utilities the opportunity to negotiate individual packages of mitigation in addition to the LTIAP's stated mitigation provisions. Such case-by-case mitigation packages could be a combination of the above mitigation provisions or could include beneficial arrangements for BPA that have not been addressed in this policy. Our main concern in any mitigation package is recovery of any spot-market revenue losses, but we will also be looking at the operational impacts of any proposal.

Extraregional Access

Provisions in the 1987 draft for firm transactions by extraregional utilities required that the utility must provide some benefit to BPA, such as increased storage, improved system coordination or operation, or other consideration of value. In addition, the utility must agree to the mitigation provisions of the policy. Canadian utilities were required to waif for access until after the Intertie was rated at 7900 MW.

In reconsidering this provision we saw no reason for denying Canadian utilities access for firm transactions until after the Intertie is upgraded to 7900 MW if Canadian utilities are willing to provide increased coordination or other items of value. This provision of limiting Canadian access to after an upgrade of the Intertie has been deleted from the LTIAP.

As with Formula Allocation, BPA anticipates that if the Free Trade Agreement is passed the distinction between U.S. extraregional utilities and Canadian utilities will not longer exist.

Fish and Wildlife Protection

Protected Areas

The LTIAP prohibits Intertie access for new hydro projects licensed within "protected areas"—river reaches

withdrawn from hydro development due to the presence of wildlife or anadromous and high-value resident fish. BPA also has designated areas where we have determined that investments in habitat, hatchery, passage, or other projects may result in the presence of anadromous fish. The Northwest Power Planning Council (Council) has proposed a protected area program that covers the entire Northwest. BPA's designations, however, cover only the Columbia River basin.

Our focus is on hydro developments which will frustrate our investments made in the region to achieve the goals of the Council's Fish and Wildlife Program. The LTIAP ensures that those expenditures and existing productive habitat will not be harmed by future hydro developments. BPA has designated protected areas by using information collected through the Council's Hydro Assessment Study.

Under the LTIAP, we will consider the Council's final protected area program or any revisions the Council may include in the future. We will also consider appropriate state comprehensive river plans. The policy should effectively eliminate utilities' fears that they never know with certainty whether a hyrdo resource will qualify, or continue to qualify, for access to the Intertie.

The LTIAP does not necessarily prevent hydro development in protected areas. However, the protected area provisions will send an unambiguous, self-enforcing message to FERC, other regulators, and hydro developers that no Intertie access will be provided for projects constructed in areas of greatest concern to BPA and the Council.

Enforcement

If a Scheduling Utility proceeds to acquire a license or purchase power from a hydro project developed in a protected area, BPA will reduce the amount of that utility's power transmitted over the Intertie during Condition 1. Depending upon the size of the project, the reduction may affect both Assured Delivery and Formula Allocations. These reductions will take place regardless of whether power from the protected area project is actually transmitted on the Intertie. There is no need to trace power flows from a protected area resource.

Projects not affected by the Policy

For all hyrdo projects not affected by BPA's protected area designations, BPA wil intervene in FERC proceedings if we determine that projects—new or existing, inside or outside the Columbia Basin—pose significant threats to our fish and wildlife responsibilities.

The provisions do not affect hyro projects licensed before the effective date of the policy. While we recognize a potential for existing projects to harm BPA fish and wildlife investments, we do not believe there is sufficient evidence to indicate that those projects are presently operating contrary to the Council's Fish and Wildlife Program or that the Council has been unable or unwilling to implement Program measures through the FERC process. Measures affecting existing projects in the Council's Program are explicitly directed to FERC and state agencies for implementation.

We have provided a limited procedure to provide access to the Intertie in the case of a project a developer believes will contribute to the Council's Fish and Wildlife Program and BPA investments. However, our decision to provide access relies on a clear demonstration of the benefits and a regional consensus.

Finally, the LTIAP creates a limited exception for Protected Area projects that an investor-owned utility might be forced to acquire under PURPA. To qualify, however, the affected utility must pursue all legal remedies available to avoid purchasing the Protected Area project output.

Part II. Long-Term Intertie Access Policy Governing Transactions Over Federally Owned Portions of the Pacific Northwest-Pacific Southwest Intertie

Table of Contents

Section 1. Definitions

1. "Administrator" means the Administrator of Bonneville Power Administration (BPA) and is used interchangeably with BPA.

2. "Administrator's Power Marketing Program" refers to all marketing actions taken and policies developed to fulfill BPA's statutory obligations. These actions and policies are based on exercises of authority to act, consistent with sound business principles, to recover revenue adequate to amortize investments in the Federal Columbia River power and transmission systems, while encouraging diversified use of electric power at the lowest practical rates. In the Northwest, the Administrator's Power Marketing Program covers BPA's obligations to provide an adequate, reliable, economical, efficient, and environmentally acceptable power supply, while preserving public preference to Federal power. In the Southwest, the Administrator's Power Marketing Program covers activities to market surplus Federal power at equitable prices, while preserving regional and public preference to Federal power, and to assist in marketing Northwest non-Federal power.

3. "Allocation" means the share of the Intertie Capacity made available for short-term sales of energy.

4. "Assured Delivery" means firm transmission service provided by BPA under a transmission contract to wheel power covered by a contract between a Scheduling Utility and a Southwest utility. Assured Delivery contracts may not exceed 20 years in duration. The service is interruptible only in the event of an uncontrollable force or a determination made pursuant to sections 7 or 8 of this policy.

5. "Available Intertie Capacity" is defined as the physically available capacity controlled by BPA, reduced by the capacity reserved under Section 2 of this policy, and the capacity necessary to satisfy Assured Delivery contracts not subject to operational mitigation requirements under this policy.

6. "BPA Resources" means Federal Columbia River Power System hydroelectric projects; resources acquired by BPA under long-term contracts; and resources acquired pursuant to section 11(b)(6)(i) of the Federal Columbia River Transmission System Act.

7. "Exchange" refers to various types of transactions that take advantage of diversity between Northwest and Southwest loads through deliveries of firm power, at prespecified delivery rates, from North to South during the Southwest's peak demands and returns of capacity and/or energy from South to North during other times. Transactions vary depending on the lag between deliveries and returns. A "naked capacity" transaction might require off-peak energy returns within 24 hours, whereas a seasonal exchange might call for firm power returns within 6 months.

8. "Extraregional Utilities" are generating utilities, or divisions thereof,

that do not provide retail electric service and do not own or operate significant amounts of generating capacity in the Northwest.

9. "Formula Allocation" means the process by which Intertie Capacity is made available for short-term sales of energy.

10. "Intertie" means the two 500-kV alternating current (AC) transmission lines and one 1000 kV direct current (DC) line, which extend from Oregon into California or Nevada, and any additions thereto identified by BPA as Pacific Northwest-Pacific Southwest Intertie facilities.

11. "Intertie Capacity" means the North to South transmission capacity of the Intertie controlled by BPA through ownership or contract; increased by power scheduled South to North, decreased by loop flow, outages, and other factors that reduce transmission capacity; and further decreased by Pacific Power & Light Company's schedules, under its scheduling rights at the Malin substation (BPA Contract Nos. DE–MS79–86BP92299 and DE–MS79–79BP90091).

12. "Mitigation" refers to the requirements imposed by BPA on a utility in return for an Assured Delivery contract. Mitigation helps offset operational and economic problems, attributable to a Scheduling Utility's firm power transaction, that inhibit BPA's ability to generate revenues. The Mitigation measures specified in this policy must be included in all Assured Delivery contracts, unless a scheduling utility either agrees to a specially designed charge or negotiates substitute measures with BPA on a case-by-case basis.

13. "Nonscheduling Utility" means a non-Federal Northwest utility that owns a Qualified Northwest Resource, but does not operate a generation control area within the Pacific Northwest. A Nonscheduling Utility requesting Intertie access for its resource must do so through the Scheduling Utility (or BPA) in whose control area the resource is located.

14. "Pacific Northwest" (or "Northwest") is defined in the Northwest Power Act, 16 U.S.C. 839e, as the States of Oregon, Washington, and Idaho; the portion of Montana west of the Continental Divide; portions of Nevada, Utah, and Wyoming within the Columbia River drainage basin; and any contiguous service territories of rural electric cooperatives serving inside and outside the Pacific Northwest, not more than 75 air miles from the areas referred to above, that were served by BPA as of December 1, 1980.

15. "Protected Area" means a stream reach within the Columbia River drainage basin specially protected from hydroelectric development because of the presence of anadromous or high value resident fish, or wildlife. Protected areas may also include stream reaches which could support anadromous fish if investments were made in habitat, hatcheries, passage, or other projects.

16. "Qualified Extraregional Resource" means:

(a) a generating unit located outside the Northwest that was in commercial operation on the effective date of this policy. However, the term excludes portions of units covered as Qualified Northwest Resources.

(b) after BPA has determined that the capacity of the Intertie is rated at approximately 7,900 MW, all resources located outside of the Northwest, other than the portions of extraregional resources covered as Qualified Northwest Resources.

17. "Qualified Northwest Resource" excludes BPA Resources, but includes:

(a) Resources located inside the Northwest that are in commercial operation as of the effective date of this policy.

(b) Scheduling Utility extraregional generating resources dedicated to Northwest loads on the effective date of this policy. This term includes pro rata portions of Montana Power Company's and Pacific Power and Light Company's shares of Colstrip No. 4 generating station, based on the ratio of their respective regional loads to their respective total loads; and Idaho Power Company's share of Valmy No. 2.

(c) New regional resources of Scheduling Utilities, except for hydroelectric resources located in Protected Areas.

18. "Resource" means an electric generating unit or stack of particular electric generating units identified to supply power or capacity for sale over the Intertie.

19. "Scheduling Utility" means the Northwest portion of a non-Federal utility that operates a generation control area within the Northwest, or any utility designated as a BPA "computed requirements customer." The term excludes Utah Power & Light Company, either as a separately owned company or as a division of another corporation, which has sufficient transmission capacity to the Southwest without access to the Federal Intertie.

20. "Seasonal Exchange" means a transaction that takes advantage of seasonal diversity between Northwest and Southwest loads through transfers of firm power, at a prespecified delivery rate, from North to South during the Southwest's summer load season and from South to North during the Northwest's winter load season. Seasonal Exchanges may involve payments of additional consideration of reflect the relative seasonal values of power throughout the western United States. Seasonal Exchange schedules of Northwest utilities will be referred to as "deliveries," and schedules of Southwest utilities will be referenced as "returns." A Scheduling Utility must be able to support its summertime firm power deliveries with generating resources that are surplus to its Northwest requirements. The sum of a Scheduling Utility's energy resources for each month in which deliveries are made (with special concern for August) must exceed its corresponding Northwest loads by an amount sufficient to support the Seasonal Exchange.

21. "Section 9(i)(3) resource" means a Scheduling Utility resource that BPA has granted priority in receiving BPA transmission, storage and load factoring services as defined in section 9(i)(3) of the Northwest Power Act.

Section 2. Intertie Capacity Reserved for BPA

The Administrator reserve for BPA's use Intertie Capacity sufficient to:

(a) Transmit all of BPA's surplus firm power and to serve other obligations,

(b) Perform obligations, including, but not limited to, the existing transmission contracts listed in Exhibit A, to the extent such obligations differ from the conditions specified in this policy,

(c) Provide Assured Delivery service for transactions not subject to limits under Exhibit B to this policy, and

(d) Satisfy BPA firm obligations, that have not been prescheduled, by using unutilized portions of Formula Allocation amounts.

Section 3. Conditions For Intertie Access

(a) All Intertie access will be granted pursuant to the conditions and procedures of this policy, unless otherwise specified in the three existing BPA transmission contracts listed in Exhibit A.

(b) BPA will provide Intertie access only for BPA Resources and the Qualified Northwest Resources of Scheduling Utilities, except to the extent that Qualified Extraregional Resources are permitted access under this policy.

(c) BPA will provide Assured Delivery and allocate remaining Intertie Capacity when providing such access will not substantially interfere with operating limitations of the Federal system. Examples of these limitations, which

reflect BPA's obligation to operate in an economical and reliable manner consistent with prudent utility practices, include:

(1) The BPA Reliability Criteria and Standards,

(2) Western Systems Coordinating Council minimum operating reliability criteria,

(3) North American Electric Reliability Council Operating Committee minimum criteria for operating reliability, and

(4) Coordination agreements among BPA, scheduling utilities and other Federal agencies regarding resource and river operations.

(d) Any utility that has contractual or ownership rights to Pacific Northwest-Pacific Southwest Intertie capacity or to other transmission lines to California or the Southwest market must fully utilize such capacity prior to receiving any access to BPA's Intertie Capacity. If a Scheduling Utility with Intertie rights needs BPA Intertie Capacity to reach a particular Southwest utility, BPA will consider negotiated swaps of capacity to accommodate such requests.

Section 4. Assured Delievery for Intertie Access.

Subject to the limitations and other conditions in this section and in other sections of this policy, BPA has determined that it can provide limited Assured Delivery to Scheduling Utilities without causing substantial interference with the Administrator's Power Marketing Program.

(a) *General Provisions*—(1) *Existing Transmission Contracts.* BPA will provide Assured Delivery for the remaining terms of the firm power sale and Seasonal Exchange contracts identified in Exhibit A to this policy.

(2) *Utilities Owning Or Controlling Southwest Interconnections.* Assured Delivery is intended primarily for Scheduling Utilities which lack interconnections with the Southwest. Except for transactions covered by section 4(b) of this policy, a utility with capacity on an intertie, through contract or ownership, must utilize all such capacity on a firm basis before receiving any Assured Delivery.

(3) *Nature Of Transactions.* BPA will not provide Assured Delivery for transactions which a Scheduling Utility cannot demonstrate to be other than an advance arrangement to sell nonfirm energy.

(4) *Waiver Of BPA Service Obligation*—(A) *Hydroelectric Resources.* Assured Delivery contracts that facilitate the export disposition of Northwest hydroelectric energy shall provide, under 16 U.S.C. 837b(d), for a reduction of BPA's power sale contract obligation to the Northwest utility, for the period of the disposition, equal to the amount of energy for which Assured Delivery is provided.

(B) *Thermal Resources.* Assured Delivery contracts that facilitate the export disposition of Northwest thermal energy shall provide, under 16 U.S.C. 839f(c), for a reduction of BPA's power sale contract obligation to the Northwest utility, for the period of the disposition, equal to the amount of energy for which Assured Delivery is provided. Such reduction shall become effective at the time BPA determines that it has reached load/resource balance, or at a date as specified in the Assured Delivery contract.

(5) *Exchange Contracts.* Exchange contracts must specify that all return energy be scheduled to either the AC Intertie point of interconnection at the California-Oregon border ("COB") or the DC Intertie point of interconnection at the Nevada-Oregon border ("NOB"). Exchange contracts must also specify prescheduled determinations of hourly energy returns.

(6) *Satisfying Requests For Assured Delivery.* All relevant power contracts must be presented for review no later than the date on which a request for Assured Delivery is made.

(b) *New Transactions Not Subject To Capacity Limits*—(1) *Joint Ventures.* Joint ventures between BPA and utilities, such as firm displacement contracts, which allow BPA to increase its sales of surplus power qualify for Assured Delivery.

(2) *Sales In Lieu Of Exchanges.* BPA may offer to satisfy Scheduling Utility demands for Seasonal Exchanges by selling them incremental amounts of surplus firm power during winter months. Upon committing to purchase such incremental firm power at negotiated prices that reflect BPA's lost opportunities for summer sales, a Scheduling Utility will qualify for Assured Delivery (with mitigation) to wheel an equal amount of firm capacity and energy over the Intertie during summer months.

(3) *Conditions.* A Scheduling Utility may request at any time the Assured Delivery of transactions identified in section 4(b)(1) and 4(b)(2). Relevant contracts must be presented for review when Assured Delivery is requested. BPA will satisfy a request within 60 days after a Scheduling Utility has demonstrated satisfaction of the requirements of this policy.

(c) *Transactions Subject To Capacity Limits Under This Policy*—(1) *Maximum Amounts Of Assured Delivery.* BPA will provide 800 MW of Assured Delivery for firm power sales and Exchanges identified in this policy. BPA will reassess the amount of Assured Delivery capacity when the 3d AC Intertie project is either completed or abandoned. Moreover, the 800 MW amount may be subject to some reduction if the DC Terminal Expansion project is not completed on schedule.

(2) *Exhibit B amounts*—(A) *Current maximum.* Each Scheduling Utility's maximum Assured Delivery amount for firm sales equals its average firm energy surplus, shown in Exhibit B to this policy. BPA will reserve capacity equal to each Scheduling Utility's Exhibit B allocation subject to section 4(c)(2)(D) below. Except for Montana Power Company (MPC), Tacoma City Light, and Cowlitz County Public Utility District, Exhibit B represents projected Scheduling Utility surpluses for the 1988–89 operating year. In satisfaction of all obligations to MPC under Northwest Power Act section 9(i)(3), MPC's Exhibit B amount is set at 105 MW to facilitate long-term sales of firm power from its share of the Colstrip No. 4 coal-fired generating station. Exhibit B amounts for Tacoma and Cowlitz are increased to accommodate existing firm power transactions.

(B) *Shaping.* Firm power sales eligible for Assured Delivery may be shaped within the following ranges. During the months of September through December, a Scheduling Utility may deliver firm energy at a rate up to 1.8 times its Exhibit B average firm surplus amount. During the months of January through Augist, a Scheduling Utility may deliver firm energy at a rate no greater than 1.0 times its Exhibit B amount. However, total delivered energy may not exceed the Exhibit B annual firm energy maximum.

(C) *Other uses of Exhibit B amounts.* BPA will not entertain Assured Delivery requests for firm power sales in excess of a utility's Exhibit B maximum. However, a Scheduling Utility may use any portion of its Exhibit B maximum, not used for firm power sales, for exchange transactions supported by Qualified Northwest Resources.

(D) *Future changes.* BPA may, at its discretion, revise Exhibit B to reflect changes in the firm power surpluses of individual utilities; however, the Exhibit B average firm surplus total is not subject to increase. Any unutilized Assured Delivery amount will be revoked if, upon revision, a utility's individual Exhibit B amount has declined or if a utility has sold firm power to another utility seeking to increase its Exhibit B average firm surplus amount. A Scheduling Utility may increase its individual Exhibit B

amount by purchasing surplus firm power from BPA or any Scheduling Utility with an Exhibit B amount.

(3) *Other Capacity.* The remaining capacity available for Assured Delivery under this policy is offered to Scheduling Utilities, on a first-come, first-served basis, for Exchange transactions supported by Qualified Northwest Resources. When section 4(c)(2)(D) of this policy is implemented to reduce the Exhibit B maximum of any Scheduling Utility, the reduction will be added to the capacity made available under this provision. Any utility with an Exhibit B amount must exhaust such capacity before requesting Assured Delivery under this provision.

(d) *Mitigation*—(1) *Operational Mitigation*—(A) *Southbound deliveries.* During any hour in which BPA has invoked Condition 1 or Condition 2 allocation procedures to preschedule energy deliveries, each utility's Assured Delivery amount shall be deducted from its formula allocation to determine its share of energy scheduled on the Intertie. If the remainder is negative for a given utility, then that utility must make up the difference by purchasing sufficient energy as follows:

(i) During Condition 1 from BPA or any Scheduling Utility with a Formula Allocation during that hour;

(ii) During Condition 2 from BPA, however, if BPA is not in the market the utility may purchase sufficient energy from any other utility.

(B) *Northbound returns.* During any hour in which BPA has invoked Condition 1 or Condition 2 allocation procedures, a utility may utilize the cash-out provisions of an Exchange contract only by reducing one-for-one the amount of North-to-South Intertie capacity otherwise available to it under this policy. The rate of cash out during any condition shall not exceed the rate at which the exchange return could have been scheduled.

(2) *Negotiated mitigation.* A Scheduling Utility may also elect to negotiate with BPA on a case-by-case basis a package of mitigation measures involving mutually agreeable consideration of value commensurate with the service provided.

Section 5. Formula Allocation Methods

(a) *Limits On Intertie Capacity Available For Formula Allocation.* Generally, BPA will determine Intertie Capacity available for Formula Allocations after first taking into account the amount of Intertie Capacity necessary to satisfy requirements of the Administrator's Power Marketing Program, existing transmission contracts listed in Exhibit C, and Assured Delivery contracts executed by BPA pursuant to this policy. However, in determining Available Intertie Capacity during Condition 1, BPA will not consider the Assured Delivery contracts to the extent they are subject to operational mitigation requirements. BPA may reduce any allocation, if additional Intertie Capacity is required to minimize revenue losses associated with actions taken to protect fish in the Columbia River drainage basin.

(b) *Protected Area Decrements.* Except as provided in section 4(a)(1) of this policy, BPA will reduce each Scheduling Utility's allocation by any Protected Area decrement imposed pursuant to section 7(d).

(c) *Allocation Methods*—(1) *Condition 1*—(A) *Until December 31, 1988.* Intertie Capacity will be allocated pursuant to the Exportable Agreement (BPA Contract No. 14-03-73155), when applicable.

(B) *After December 31, 1988.* Condition 1 will be in effect when the Federal hydro system is in spill or there is a likelihood of spill, as determined by BPA. Available Intertie Capacity will be allocated pursuant to the following procedure:

(i) Each hour, the maximum Condition 1 allocations for BPA and each Scheduling Utility will be based on the ratio of their respective declarations to total declarations, multiplied by the Available Intertie Capacity.

(ii) During Condition 1, whenever BPA iks unable to utilize its full pro rata share of intertie usage BPA will take larger allocations on ensuing days until the difference in pro rata intertie usage is eliminated.

(2) *Condition 2.* (A) When Condition 1 is not in effect, under BPA and Scheduling Utilities declare amounts of energy that exceed available Intertie capacity, Formula Allocations for BPA and each Scheduling Utility will approximate, by hour, the ratio of each declaration to the sum of all declarations, multiplied by the available Intertie capacity.

(B) If BPA sales drop below 75 percent of its allocation during Condition 2, BPA may take larger allocations on ensuing days until difference is eliminated.

(3) *Condition* 3. When Condition 1 is not in effect and when the total surplus energy declared available by BPA and Scheduling Utilities is less than the total available Intertie Capacity, BPA and Scheduling Utilities' allocations will equal their declarations. The remaining Intertie capacity will be made available first to U.S. Extraregional Utilities and then to other Extraregional Utilties. Section 3(d) of this policy shall not apply to Scheduling Utilities during Condition 3.

(d) *Forumla Allocation Experiment.* BPA is interested in exploring the proposal that it cease making individual Formula Allocations to Scheduling Utilities under Conditions 2 and 3. However, BPA must work with Northwest and Southwest utilities to develop the information capability to accommodate a new scheduling system for non-Federal access. As soon as this can be accomplished BPA will substitute the following provisions of section 5(c) on an 18-month experimental basis:

(1) *Condition 1.* Same as section 5(c)(1).

(2) *Condition 2.* (A) When Condition 1 is not in effect, but BPA and Scheduling Utilities declare amounts of energy that exceed available Intertie capacity, the Formula Allocation for BPA will approximate, by hour, the ratio of BPA's declaration to the sum of all declarations, multiplied by the Available Intertie Capacity. The remaining capacity will be made available as a block to Scheduling Utilities. Section 5(c)(2)(B) of this policy shall apply.

(3) *Condition 3.* When Condition 1 is not in effect and when the total surplus energy declared available by BPA and Scheduling Utilities is less than the total available Intertie Capacity, BPA's allocation will equal its declaration. The remaining Intertie capacity will be made available, first, as a block to satisfy the declarations of Scheduling Utilities, second, to U.S. Extraregional Utilties, and third to other Extraregional Utilities. Section 3(d) of this policy shall not apply during Condition 3.

(e) *Data Collection and Evaluation.* Commencing when this policy goes into effect and continuing during the course of the experiment described in section 5(d), BPA will collect information on the following topics relevant to future allocation procedures:

(1) Effect on BPA revenue of allocating to non-Federal utilities as a group rather than individually.

(2) Impairment of Intertie access for California utilities presently lacking ownership in the southern portion of the Intertie.

(3) Any loss of sales to BPA due to a failure to share unused capacity among California entities with ownership or contractual interests in the Intertie.

(4) Effects of the experiment on small Scheduling Utilities. During the course of the experiment, interested parties may submit written comments and recommendations on these issues.

(f) *Findings and conclusions.* At least 30 days before the end of the experiment

described in section 5(b), BPA shall publish a report of its findings on the experiment and its decision on whether section 5(d), with possible modification, which be continued as the permanent method of Fomula Allocation.

Section 6. Access for Qualified Extraregional Resources

(a) *Assured Delivery.* Any request for Assured Delivery of power from a Qualified Extraregional Resources would be granted only by contract which, in addition to the Mitigation measures specified in section 4(d), must include benefits to BPA such as increased storage, improved system coordination or operation, or other consideration of value commensurate with the services provided. Proposed contracts would be evaluated by BPA and reviewed publicly to determine whether they would cause substantial interference with the Administrator's Power Marketing Program. An environmental review would also be conducted.

(b) *Formula Allocation.* Under Condition 3, energy from Qualified Extraregional Resources has access to the Intertie. In addition, BPA may provide Extraregional Utilities with Formula Allocation under other conditions, if the utility agrees by contract either to increased participation in the Pacific Northwest's coordinated planning and operation, or to provide other consideration of value, apart from the standards BPA wheeling rate, commensurate with the services provided.

Section 7. Fish and Wildlife Protection.

(a) *Purpose.* New hydroelectric projects constructed in Protected Areas may substantially decrease the effectiveness of, or substantially increase the need for, expenditures and other actions by BPA, under Northwest Power Act section 4(h), to protect, mitigate or enhance fish and wildlife resources. Intertie access will not be provided to facilitate the transmission of power generated by any new hydroelectric projects located in Protected Areas and licensed after the effective date of this policy. This provision does not apply to added capacity at exiting projects.

(b) *Effect.* This section imposes automatic operational limitations on a utility by reducing the amount to energy that can be scheduled over the Intertie, thereby increasing costs of reducing revenues for any utility owning or acquiring the output of a Protected Area hydroelectric resource.

(c) *Implementation.* Protected Area designations for stream reaches in the Columbia River Basin are shown in Exhibit C to this policy. Exhibit C uses Environmental Protection Agency stream reach codes. Subject to review and possible modification, BPA will consider the adoption of comprehensive state watershed management plans and a comprehensive protected areas program developed by the Pacific Northwest Electric Power and Conservation Planning Council subsequent to implementation of this policy. BPA will also consider revisions to Protected Areas designations if the Council's Program is amended.

(d) *Enforcement.* If a Scheduling Utility or Nonscheduling Utility owns, or acquires the output from, a hydroelectric project covered under the restrictions of section 7(a), BPA will reduce that utility's Formula Allocation by either the nameplate rating of the project (in the case of ownership), or the amount of capacity acquired by contract.

(e) *Exceptions.*—(1) *PURPA Projects.* BPA will entertain requests that it not enforce the provisions of section 7 in situations where an investor-owned utility has been compelled to acquire the output of a Protected Area hydroelectric resource under section 210 of the Public Utilities Regulatory Policies Act (PURPA). To qualify for this exception, the investor-owned utility must demonstrate:

(A) That it has exercised all opportunities available under federal and state laws and regulations to decline to acquire the output of the Protected Area resource in question;

(B) That it has petitioned its state regulatory authority(ies) to reduce the rate(s) established under PURPA for purchases from Protected Area resources in recognition of the increased costs or reduced revenues caused by operation of section 7(c) of this policy;

(C) That BPA was provided reasonable notice of all relevant regulatory and judicial proceedings to allow for timely intervention in such proceedings; and

(D) After taking all of the foregoing steps and exhausting all reasonable opportunities for judicial review, that it was compelled to acquire the output of a Protected Area hydroelectric resource by final order of FERC or a state regulatory authority issued under PURPA.

(2) *Projects Contributing to Council's Fish and Wildlife Program or BPA Investments.* Access will be automatically denied for projects developed in protected areas unless BPA receives sufficient demonstration that a particular project will provide benefits to existing pr planned BPA fish and wildlife investments or the Council's Program. BPA's determination will be based on:

(A) Information provided by the project developer, Federal and state fish and wildlife agencies, and tribes; or

(B) Action by the Pacific Northwest Power Planning Council.

Section 8. Other Enforcement Provisions

(a) Whenever the terms of this policy are not being met, BPA will inform the appropriate utility of the nature of the noncompliance and actions that may be taken to achieve compliance. If noncompliance is not corrected within a reasonable period, BPA may deny access for a resource and refuse to accept schedules.

(b) Upon approval of the proposed U.S.-Canada Free Trade Agreement by the Canadian Parliament and the United States Congress, any and all distinctions made in this policy between Canadian and United States Extraregional Utilities shall teminate on the effective date of the Agreement.

Exhibit A—Existing Agreements for Intertie Capacity

This is a list of existing BPA transmission contracts that were signed before the implementation of the NTIAP and will continue to receive Intertie access under the LTIAP.

Utility	BPA contract No.	Expiration date
Washington Water Power Company.	DE-MS79-81BP90185	07/01/91
Washington Water Power Company.	14-03-791101.	09/01/88
Western Area Power Administration.	DE-MS79-84BP91627	10/31/90

Exhibit B—Intertie Capacity Available for Assured Delivery

BPA has reserved 800 MW of Intertie capacity to be available for non-Federal firm transactions. This capacity is allocated as follows:

A. Average Firm Surplus Allocations

Utility	Average MW firm Surplus
Chelan County PUD #1	10
Cowlitz County PUD #1	[1]45
Douglas County PUD #1	[2]0

Utility	Average MW firm Surplus
Eugene Water and Electric Board	14
Grant County PUD #1	26
Seattle City Light	23
Snohomish County PUD #1	0
Tacoma City Light	[3]41
Idaho Power Company	87
Montana Power Company	[4]105
Puget Sound Power and Light	0
Washington Water Power	93
Total	444

[1] Cowlitz Co. PUD's AFS is the amount of their existing export of the Longview Fibre resource. Longview Fibre is considered to be Federal resouce in the Northwest Regional Forecast and is not included under Cowlitz.

[2] Douglas County PUD's AFS is 2; but Douglas has previously requested to show zero.

[3] The amount displayed for Tacoma is the amount of their existing exports displayed in the Northwest Regional Forecast.

[4] Montana Power Company's AFS was increased from 80 MW to 105 MW in settlement of obligations under Northwest Power Act section 9(i)(3).

Note: The Average Firm Surplus (AFS) is directly from the PNUCC Northwest Regional Forecast of March 1987 for the period 1988–89 except as noted below. It includes resources operational on the effective date of this policy. Export contracts are included as loads. Utilities may use their AFS allocations for long term firm sales or for exchanges. Portland General Electric Company and Pacific Power & Light Company are not eligible for an AFS allocation because of their existing interconnections with the Southwest.

B. Intertie Capacity Available for Exchanges

The above allocations for sales of firm surplus may be used for exchanges. The remaining 365 MW of capacity is available on a first come-first serve basis for exchanges only under the terms of the LTIAP. If there is a decrease in a utility's firm surplus and the utility does not have a contract for that amount, BPA will allocate the differecne to capacity available for exchange by revising this Exhibit B.

Exhibit C—Protected Areas

Exhibit C corresponds to the Northwest Power Planning Council protected area designations within the Columbia Basin, as specified in the Columbia River Basin Fish and Wildlife Program. Stream reaches designated as protected areas are identified by Environmental Protection Agency stream reach codes. Information about designations are contained on hard copy computer printouts or computer diskette copies which are available to the public upon request.

Issued in Portland, Oregon, on June 21, 1988.

Edward W. Sienkiewicz,

Acting Deputy Administrator.

[FR Doc. 88–14648 Filed 6–28–88; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 88–33–NG]

Open Flow Gas Supply Corp.; Application to Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on May 27, 1988, of an application filed by Open Flow Gas Supply Corporation (Open Flow) for blanket authorization to import up to 55 Bcf of Canadian natural gas on a short-term or spot basis over a two-year period beginning on the date of first delivery..

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comment are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than July 29, 1988.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Natural Gas Divison, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–9478.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585 (020) 586–6667.

SUPPLEMENTARY INFORMATION: Open Flow, a privately held company with its principal place of business in DuBois, Pennsylvania, intends to import the gas from a variety of Canadian suppliers and to resell it to U.S. purchasers, including, but not limited to, pipelines, local distribution companies, and commercial and industrial end-users. Open Flow contemplates importing the gas for its own account and as an agent for U.S. purchasers and Canadian suppliers.

The terms of each transaction will be negotiated in response to market conditions. Open Flow intends to utilize existing pipeline facilities and proposes to submit quarterly reports giving details of individual transactions within 30 days following each calendar quarter.

The decision on this application will be made consistent with the DOE's gas import policy guidlines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the ERA approves this requested blanket import, it may permit the import of the gas at any existing point of entry and through any existing transmission system.

Open Flow requests that its authorization be granted on an expedited basis. Section 590.205(a) of the ERA's administrative procedures generally requires that the ERA publish a **Federal Register** notice summarizing an application and providing a 30 day public comment period except in emergency circumstances. Open Flow has failed to identify any emergency circumstances that would justify expedited consideration. Therefore, a decision on the application will not be made until all responses to this notice have been received and evaluated.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration,

Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., July 29, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Open Flow's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issed in Washington, DC, June 22, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-14652 Filed 6-28-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 88-18-NG]

Reliance Gas Marketing Co.; Order Granting Blanket Authorization to Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas from and export natural gas to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Reliance Gas Marketing Company (Reliance Marketing) blanket authorization to import natural gas from and export natural gas to Canada. The order issued in ERA Docket No. 88-18-NG authorizes Reliance Marketing to import up to 100 Bcf of Canadian natural gas and to export to Canada up to 100 Bcf of domestic natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, June 23, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-14653 Filed 6-28-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50680; FRL-3407-1]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits.

275-EUP-60. Abbott Laboratories, Chemical and Agricultural Products Division, 1400 Sheridan Road, North Chicago, IL 60064. This experimental use permit allows the use of 7,249 grams of the plant growth regulator N-[phenylmethyl]-1H-purine-6-amine on 390 acres of apples to evaluate apple thinning. The program is authorized only in the States of California, Georgia, Illinois, Indiana, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Virginia, Washington, West Virginia, and Wisconsin. The experimental use permit is effective from May 6, 1988 to May 6, 1989. A permanent tolerance for residues of the active ingredient in or on apples has been established (40 CFR 180.376). (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

7969-EUP-25. Issuance. BASF Corporation, Agricultural Chemicals Group, 100 Cherry Hill Road, Parsippany, NJ 07054. This experimental use permit allows the use of 100 pounds of the herbicide 3,7-dichloro-8-quinolinecarboxylic acid on 200 acres of rice to evaluate the control of grasses and broadleaf weeds. The program is authorized only in the States of Arkansas, California, Louisiana, Mississippi, Missouri, and Texas. The experimental use permit is effective from April 29, 1988 to April 29, 1989. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 245 CM#2, (703-557-1800))

352-EUP-131. Issuance. E.I. duPont deNemours and Company, Inc., Walker's Mill Building, Barley Mill Plaza, Wilmington, DE 19898. This experimental use permit allows the use of 133 pounds of the miticide *trans*-5-[4-chlorophenyl-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide on 700 acres of fresh market pears to evaluate the control of the European red, two-spotted spider, and McDaniel spider. The program is authorized only in the States of California, Oregon, and Washington. The experimental use permit is effective from May 13, 1988 to May 13, 1989. (George LaRocca, PM 15, Rm. 204, CM#2, (703-557-2400))

42545-EUP-1. Extension. Gilmore, Inc., 1755 N. Kirby Parkway, Suite 300, Memphis, TN 38119. This experimental use permit allows the use of 4,140 pounds of the herbicide O-(6-chloro-3-phenyl-4-pyridazinyl)-S-octyl-carbonothioate on 4,600 acres of corn to evaluate the control of annual weeds. The program is authorized only in the States of Illinois, Indiana, Iowa, Kansas,

Minnesota, Nebraska, New York, Ohio, Oregon, Texas, Virginia, Washington, and Wisconsin. The experimental use permit is effective from May 1, 1988 to May 1, 1989. A temporary tolerance for residues of the active ingredient in or on corn (fodder, forage, grain, and silage) has been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

42545–EUP–2. Extension. Gilmore, Inc., 1755 N. Kirby Parkway, Suite 300, Memphis, TN 38119. This experimental use permit allows the use of 7,920 pounds of the herbicide O-(6-chloro-3-phenyl-4-pyridazinyl)-S-octyl-carbonothioate on 4,400 acres of peanuts to evaluate the control of annual weeds. The program is authorized only in the States of Alabama, Florida, Georgia, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia. The experimental use permit is effective from May 1, 1988 to May 1, 1989. A temporary tolerance for residues of the active ingredient in or on peanuts (hay, hull, and meat) has been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

618–EUP–12. Extension. Merck and Company, Inc., Hillsborough Road, Three Bridges, NJ 08887. This experimental use permit allows the use of 244.5 pounds of the miticide Avermectic B_1 on 3,260 acres of citrus to evaluate the control of various mites. The program is authorized only in the States of Arizona, California, Flordia, and Texas. The experimental use permit is effective from May 1, 1988 to May 1, 1989. Temporary tolerances for residues of the active ingredient in or on citrus fruits have been established. Temporary food and feed additive tolerances for residues of the active ingredient in citrus oil and citrus pulp have been established. (George LaRocca, PM 15, Rm. 204, CM#2, (703–557–2400))

45639–EUP–36. Renewal. Nor-Am Chemical Company, 3509 Silverside Road, P.O. Box 7495, Wilmington, DE 19803. This experimental use permit allows the use of 341.25 pounds of the defoliants diuron and thidiazuron on 2,275 acres of cotton to evaluate its effect as a pre-harvest aid. The program is authorized only in the States of Arizona, Arkansas, California, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina. The experimental use permit was previously effective from July 22, 1987 to November 30, 1987; the permit is now effective from August 15, 1988 to November 30, 1988. Permanent tolerances for residues of the active ingredients in or on cottonseed have been established (40 CFR 180.106 and 180.403). (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830))

56089–EUP–1. Issuance. Toltec Corporation, 4851 East Washington, Suite 100–A, Phoenix, AZ 85034. This experimental use permit allows the use of 6,200 pounds of the fumigant anhydrous ammonia on cottonseed to evaluate the control of the pink bollworm on 310 tons of cotton. The program is authorized only in the State of Arizona. The experimental use permit is effective from May 25, 1988 to May 24, 1989. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Jeffrey Kempter, PM 32, Rm. 711, CM#2, (703–557–3964))

400–EUP–64. Issuance. Uniroyal Chemical Company, Inc., 74 Amity Road, Bethany, CT 06525. This experimental use permit allows the use of 1,592 pounds of the fungicide 1-[1-[[4-chloro-2-(trifluormethyl)phenyl]imino]-2-propoxyethyl]1H-imidazole on 953 acres of apples, grapes, and pears to evaluate the contol of various diseases. The program is authorized only in the States of California, Idaho, Massachusetts, Michigan, Missouri, New York, Ohio, Oregon, Pennsylvania, Vermont, Virginia, and Washington. The experimental use permit is effective from April 26, 1988 to April 1, 1989. A temporary tolerance for residues of the active ingredient in or on apples, grapes, and pears has been established. A temporary feed additive tolerance for residues of the active ingredient in apple pomace, grape pomace, and raisin waste has been established. (Lois Rossi, PM 21, Rm. 227, CM#2, (703–557–1900))

2724–EUP–48. Issuance. Zoecon Industries, 1200 Denton Drive, Dallas, TX 75234. This experimental use permit allows the use of 0.20 pounds of the insecticides ethofenprox and hydroprene on 40 apartments to evaluate the control of cockroaches. (George LaRocca, PM 15, 204, CM#2, (703–557–2400))

2724–EUP–49. Issuance. Zoecon Industries, 1200 Denton Drive, Dallas, TX 75234. This experimental use permit allows the use of 0.40 pounds of the insecticides ethofenprox and hydroprene on 40 apartments to evaluate the control of cockroaches. This program and the one above are authorized only in the States of California and Texas. Both permits are effective from April 21, 1988 to April 21, 1989. The permits are issued with the limitation that the product is only used in domestic dwellings and is not used in commercial food/feed establishments. (George LaRocca, PM 15, 204, CM#2, (703–557–2400))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: June 17, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–14615 Filed 6–28–88; 8:45 am]

BILLING CODE 6560–50

[OPP–30256B; FRL–3405–4]

American Cyanamid Co.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by American Cyanamid Co., to conditionally register the pesticide product Assert® Herbicide containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 245, TS–767C, Environmental Protection Agency, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703–557–1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of December 26, 1985 (50 FR 52852), which announced that American Cyanamid Co., Agricultural Research Div., PO Box 400, Princeton, NJ 08540, had submitted an application to register the pesticide product Assert® Herbicide Technical, containing the active ingredient methyl 2-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-*p*-toluate and methyl 6-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-*m*-toluate at 29 percent; an active ingredient not included in any previously registered product.

The application was approved on April 11, 1988, as "Assert® Herbicide" for general use in wheat, barley, and sunflowers.

The active ingredient identified in the above application of December 26, 1985 (50 FR 52852), was revised to read "*m*-Toluic acid, 6-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-, methyl ester and *p*-Toluic acid, 2-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)methyl ester" at 27 percent. The product was assigned EPA Registration No. 241–285.

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of *m*-Toluic acid, 6-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-, methyl ester and *p*-Toluic acid, 2-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)methyl ester, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *m*-Toluic acid, 6-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-, methyl ester and *p*-Toluic acid, 2-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)methyl ester during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is in the public interest.

This registration has been issued on the condition that the following information is submitted by the listed date:

1. Production information (pounds or gallons produced) for this product for the fiscal year in which the use of wheat, barley, and sunflowers are conditionally registered, in accordance with FIFRA section 29. The fiscal year begins October 1 and ends September 30. Production information will be submitted to the Agency no later than November 15, following the end of the proceeding fiscal year.

2. Additional field dissipation studies must be submitted by July 11, 1990. The level of detection should be 10 ppb.

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration is in the public interest. Use of this pesticide is of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticide will not result in unreasonable adverse effects to man and the environment.

More detailed information on this conditional registration is contained in a Chemical Fact Sheet on *m*-Toluic acid, 6-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-, methyl ester and *p*-Toluic acid, 2-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)methyl ester.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from Registration Division (TS–767C), Environmental Protection Agency, Registration Support and Emergency Response Branch, 401 M Street SW., Washington, DC 20460.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM#2, Arlington, VA 22202 (703–557–4460). Request for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M Street SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: June 17, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88–14378 Filed 6–28–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3406–2]

Buckhorn Pesticide Site Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Buckhorn Pesticide Site, Buckhorn, North Carolina, with Mr. Jack Raper. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Thu Kim Dao, Environmental Engineer Investigation and Cost Recovery Unit Site Investigation and Support Branch, Waste Management Division, U.S. EPA, Region IV 345 Courtland Street, NE., Atlanta, GA 30365 404–347–5059.

Written comments may be submitted to the person above by July 29, 1988.

Date: June 21, 1988.

Lee A. Dehihns III,

Acting Regional Administrator.

[FR Doc. 88–14593 Filed 6–28–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3406–3]

Sole Source Aquifer Designation for the Monhegan Island Aquifer System, Maine

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In response to a petition from the State of Maine, notice is hereby given that the Regional Administrator, Region I, of the U.S. Environmental Protection Agency (EPA) has determined that the Monhegan Island Aquifer System satisfies all determination criteria for designation as a sole source aquifer, pursuant to section 1424(e) of the Safe Drinking Water Act. The following findings were made in accordance with the designation criteria: Monhegan Island Aquifer System is the sole source of drinking water for the residents of Monhegan Island; there are no viable alternative sources of sufficient supply; the boundaries of the designated area and project review area have been reviewed and approval by EPA; and, if contamination were to occur, it would pose a significant public health hazard and a serious financial burden to the State of Maine. As a result of this action, all federal financially assisted projects proposed for construction or modification to take place on Monhegan Island will be subject to EPA review to minimize the risk of ground water contamination from these projects.

DATE: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern time July 13, 1988.

ADDRESSES: The data upon which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region I, JFK Federal Building, Water Management Division, WGP 2113, Boston, MA 02203. The designation petition submitted may also be inspected at the Maine State Planning Office in Augusta, Maine.

FOR FURTHER INFORMATION CONTACT: Robert E. Mendoza, Chief of the Ground Water Management Section, EPA Region I, JFK Federal Building, WGP–2113, Boston, MA 02203, 617–565–3600.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300f, 300h–3(e), Pub. L. 93–523) states:

> If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On May 16, 1988, EPA received a petition from the State of Maine requesting the designation of the Monhegan Island Aquifer System as a sole source aquifer. EPA determined that the petition fully satisfied the Completeness Determination Checklist. A public meeting was then scheduled and held on June 2, 1988, on Monhegan Island, Maine, in accordance with all applicable notification and procedural requirements. A two week comment period followed the meeting.

II. Basis for Determination

Among the factors considered by the Regional Administrator as part of the detailed review and technical verification process for designating an area under section 1424(e) were: (1) Whether the aquifer is the sole or principal source (more than 50%) of drinking water for the defind aquifer service area, and that the volume of water from an alternative source is insufficient to replace the petitioned aquifer; (2) whether contamination of the aquifer would a significant hazard to public health; and (3) whether the boundaries of the aquifer, its recharge area and streamflow source area, the project designation area, and the project review area are appropriate. On the basis of technical information available to EPA at this time, the Regional Administrator has made the following findings in favor of designating the Monhegan Island Aquifer System as a sole source aquifer:

1. The Monhegan Island Aquifer System is the sole source of drinking water to all of the residents within the service area.

2. There exists no reasonable alternative drinking water source or combination of sources of sufficient quantity to supply the designated service area.

3. EPA has found that the State of Maine has appropriately delineated the boundaries of the aquifer recharge area, project designation area and project review area.

4. Although the quality of the Island's ground water is considered adequate, it is vulnerable to contamination due to the Island's geological characteristics and landuse activities. Because of this, contaminants can be rapidly introduced into the aquifer system from many sources with minimal assimilation.

Since all residents are totally dependent upon the aquifer for their drinking water, a serious contamination incident could pose a significant public health hazard.

III. Description of the Monhegan Island Aquifer System, Designated Area and Project Review Area

The Monhegan Island Aquifer System is a 0.8 square mile ocean island located in the mid-coastal region of Maine, approximately 50 miles east of Portland and 10 miles from Port Clyde, the nearest mainland town. The aquifer system is comprised of a single interconnected bedrock aquifer. The aquifer material consists of mafic intrusive rocks (gabbro and diorite). The Island has relief of 165 feet, with a fairly gentle slope along the western shore. There is a very small pond in the east-central portion of the Island, but no streams or other surface waters exist.

The designated area is defined as the surface area above the aquifer system and its recharge area. For the Monhegan Island Aquifer System the boundary of the designated area coincides with the boundary of the watershed basin. The watershed boundary is the surface water divide based on topography, which corresponds to the ground water divide. The designated area, project review area and service area are conterminous, encompassing all of Monhegan Island.

IV. Information Utilized in Determination

The information utilized in this determination includes: the petition submitted to EPA Region I by the State of Maine; verbal comments made by the public. This information is available to the public and may be inspected at the address listed above.

V. Project Review

EPA Region I is working with the federal agencies most likely to provide financial assistance to projects in the project review area. Interagency procedures and Memoranda of Understanding have been developed through which EPA will be notified of proposed commitments by federal agencies to projects which could contaminate the Monhegan Island Aquifer System. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments when appropriate. Should the Regional Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for federal financial assistance may be entered into. However, a commitment for federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to ensure that it will not contaminate the aquifer. Included in the review of any federal fianancially assisted project will be the coordination with state and local agencies and the project's developers. Their comments will be given full consideration and EPA's review will attempt to compliment and support state and local ground water protection measures. Although the project review process cannot be delegated, EPA will rely to the maximum extent possible on any existing or future state and/or local control measures to protect the quality of ground water in the Monhegan Island Aquifer System.

VI. Summary and Discussion of Public Comments

Initially, the rationale for designation did not seem apparent to Monhegan Island residents who attended the public meeting, because funding is not currently available for demonstration projects and the improbability that any

large federally assisted projects will be proposed for the Island.

State and federal personnel explained, that through designation, the Island can be recognized as a unique area that is solely dependent upon one source of water. Such designation can lead to: additional technical assistance provided by both state and federal agencies relating to general ground water protection measures and public water supply issues; development of coordination mechanisms between appropriate state agencies that regulate the Island's land and water use activities and recognition of the uniqueness of the water supply and issues that affect an ocean island. After this clarification, public comments clarification, public comments supported designation of the Monhegan Island Aquifer System as a sole source aquifer.

Date: June 17, 1988.

Michael R. Deland,

Regional Administrator.

[FR Doc. 88-14594; Filed 6-28-88; 8:45 a.m.]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Meeting

The Consumer Advisory Council will meet on Thursday, July 14, and Friday, July 15. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The July 14 session is expected to begin at 9:00 a.m. and to continue until 5:00 p.m. with a lunch break from 1:00 until 2:00 p.m. The July 15 session is expected to begin at 9:00 a.m. and continue until 1:00 p.m. The Martin Building is on C Street, Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

1. *Committee Reports.* Updates from Council committees on work plans for the remainder of the year.

2. *Update on Community Reinvestment Act.* Discussion led by Council members on pending legislative proposals for strengthening the Community Reinvestment Act.

3. *Unbanked Communities.* Discussion led by Council members on unbanked communities and possible alternatives for addressing any unmet needs.

4. *Mandatory Cashing of Government Checks.* Discussion led by Council members on pending legislation to require financial institutions to cash government checks for non-depositors.

5. *Exportation of Rates and Other Charges.* Discussion led by Council members on the extent to which out-of-state banks can export interest rates, late charges, and other fees that exceed state-imposed limitations.

6. *Expedited Funds Availability.* Briefing by Board staff on the implementation of the disclosure provisions of the Expedited Funds Availability Act.

7. *1989 Consumer Survey.* Briefing by Board staff on a Board-sponsored consumer survey (scheduled for April 1989) regarding household use of financial services.

8. *Regulatory Update.* Status of recent Board regulatory actions in the area of consumer financial services.

9. *Legislative Update.* Briefing by Board staff to inform Council members of the outlook for banking and consumer protection legislation.

Other matters previously considered by the Council or initiated by Council members may also be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments must be received no later than close of business Friday, July 8, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Bedelia Calhoun, Staff Specialist, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-2412. Telecommunications Device for the Deaf (TDD) users may contact Earnestine Hill or Dorothea Thompson (202) 452-3544.

Board of Governors of the Federal Reserve System, June 23, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-14574 Filed 6-28-88; 8:45 am]

BILLING CODE 6210-01-M

Delaware National Bancshares Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or th*de novo* in the business of making consumer loans in amounts between $500 to $5,000, pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President), 701 East Byrd Street, Richmond, Virginia 23261:

(1) *First Union Corporation*, Charlotte, North Carolina; to engage *de novo* through its subsidiary Georgia Interchange Network, Inc., Atlanta, Georgia; in providing consulting services to member and nonmember depository institutions to assist in the development of institution-specific marketing and promotional EFT programs in such areas as ATM site selection, card design, EFT

program graphics, customer and employee education and promotion, strategic EFT marketing planning and advertising and public relations planning; to provide consulting services relating to EFT operations, including, among other things, hardware and software selection, ATM/POS installation, telecommunications, card plastic production, encoding and distribution, and transaction set selections; to provide consulting services on EFT issues to senior officers of member and nonmember depository institutions; to organize and coordinate EFT research studies sponsored by participating institutions and/or processors; and to assist participating institutions to establish disaster recovery plans in areas such as equipment, personnel, operations documentation, system software, transportation, environmental and contractual considerations and test plans and execution, pursuant to § 225.25(b)(11) of the Board's Regulation Y.

(2) *First Wachovia Corporation*, Winston-Salem, North Carolina; to engage *de novo* through its subsidiary Georgia Interchange Network, Inc., Atlanta, Georgia; in providing consulting services to member and nonmember depository institutions to assist in the development of institution-specific marketing and promotional EFT programs in such areas as ATM site selection, card design, EFT program graphics, customer and employee education and promotion, strategic EFT marketing planning and advertising and public relations planning; to provide consulting services relating to EFT operations, including, among other things, hardware and software selection, ATM/POS installation, telecommunications, card plastic production, encoding and distribution, and transaction set selections; to provide consulting services on EFT issues to senior officers of member and nonmember depository institutions; to organize and coordinate EFT research studies sponsored by participating institutions and/or processors; and to assist participating institutions to establish disaster recovery plans in areas such as equipment, personnel, operations documentation, system software, transportation, environmental and contractual considerations and test plans and execution, pursuant to § 225.25(b)(11) of the Board's Regulation Y.

D. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street NW., Atlanta, Georgia 30303:

(1) *Northwest Georgia Financial Corporation*, Dallas, Georgia; to engage *de novo* through its subsidiary Citizens Guaranty Mortgage Company, Dallas, Georgia; in the origination of mortgage loans, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 23, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-14578 Filed 6-28-88; 8:45 am]

BILLING CODE 6210-01-M

First Chicago Corp.; Proposal to Underwrite and Deal in Certain Securities to a Limited Extent

First Chicago Corporation, Chicago, Illinois ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.23(a)(3), of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage through First Chicago Capital Markets, Inc., Chicago, Illinois ("Company"), in the activities of underwriting and dealing in, to a limited degree, commercial paper, municipal revenue bonds (including "public ownership" industrial development bonds), 1–4 family mortgage-related securities and consumer-receivable-related securities ("ineligible securities"). These securities are eligible for purchase by banks for their own account but not eligible for banks to underwrite and deal in.

Applicant has also applied to underwrite and deal in securities that state member banks are permitted to underwrite and deal in under the Glass-Steagall Act ("eligible securities") (U.S. government securities, general obligations of states and municipalities and certain money market instruments), as permitted by § 225.25(b)(16) of Regulation Y (12 CFR 225.25(b)(16)). Company would conduct the proposed activities on a nationwide basis.

The application presents issues under section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as The First National Bank of Chicago, with a firm that is "engaged principally" in such activities on the basis of the restrictions on the amount of the proposed activity relative to the total business conducted by the underwriting subsidiary.

Applicant has applied to underwrite and deal in ineligible securities in accordance with most of the limitations set forth in the Board's Orders approving those activities for a number of bank holding companies. *See, e.g., Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987) (underwriting and dealing in commercial paper, municipal revenue bonds and mortgage-related securities) ("*Citicorp/Morgan/Bankers Trust*"); and *Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation and Security Pacific Corporation*, 73 Federal Reserve Bulletin 731 (1987) (underwriting and dealing in consumer-receivable-related securities) ("*Chemical*"). Applicant's proposal differs from the Board's *Citicorp/Morgan/Bankers Trust* and *Chemical* Orders in that Company would underwrite and deal in ineligible securities up to 10 percent of Company's gross revenue.

Applicant has also proposed to engage in the following incidental activities: (1) Making private placements of eligible and ineligible securities as agent; (2) advising clients as to the general market conditions and as to the structuring, timing, pricing and other terms of any contemplated issuance or placement of such securities; and (3) utilizing hedging techniques to manage interest rate risks incurred by Company in connection with the proposed activities.

In publishing Applicant's proposal for comment, the Board does not take any position on the differences between Applicant's proposal and the Board's prior ineligible securities underwriting orders. Notice of the proposal is published solely in order to seek the views of interested persons and does not represent a determination by the Board that the proposal is consistent with the Board's prior orders.

Any request for a hearing on this application must comply with 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 18, 1988.

Board of Governors of the Federal Reserve System, June 23, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-14575 Filed 6-28-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 14, 1988.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Michael D. Johnson*, Jackson, Tennessee; to acquire 9.34 percent of the voting shares of Dyer F&M Bancshares, Inc., Dyer, Tennessee, and thereby indirectly acquire Farmers and Merchants Bank, Dyer, Tennessee.

2. *Albert D. Noe*, Jackson, Tennessee; to acquire 9.34 percent of the voting shares of Dyer F&M Bancshares, Inc., Dyer, Tennessee, and thereby indirectly acquire Farmers and Merchants Bank, Dyer, Tennessee.

Board of Governors of the Federal Reserve System, June 23, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-14577 Filed 6-28-88; 8:45 am]

BILLING CODE 6210-01-M

Society Corp.; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a) or (f) of the Board's Regulation Y (12 CFR 225.23 (a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 21, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

(1) *Society Corporation*, Cleveland, Ohio; to engage *de novo* through its subsidiary Society Investor Services Corporation, Cleveland, Ohio, in underwriting and dealing to a limited degree, and as permissible pursuant to section 20 of the Glass-Steagall Act (12 U.S.C. 377), in certain municipal revenue bonds, 1-to-4 family mortgage-related securities, commercial paper, and certain consumer receivable-related securities; underwriting and dealing in bank-eligible securities pursuant to § 225.25(b)(16) of the Board's Regulation Y; offering combined securities brokerage and investment advice to institutional and retail customers; offer advice in connection with mergers and acquisitions, divestitures, loan syndications, interest rate swaps, interest rate caps, and similar transactions to unaffiliated financial and nonfinancial institutions.

Board of Governors of the Federal Reserve System, June 23, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-14579 Filed 6-28-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Human Fetal Tissue Transplantation Research Panel; Advisory Committee to the Director; Meeting

Notice is hereby given that the Human Fetal Tissue Transplantation Research Panel, an ad hoc group of consultants to the Advisory Committee to the Director, NIH, will meet to provide individual advice on questions relating to the use of human fetal tissue in transplantation research. This meeting has been instituted by the NIH in response to the March 22, 1988, request from the Assistant Secretary for Health to "convene one or more special outside advisory committees that would examine comprehensively the use of human fetal tissue from induced abortions for transplantation and advice us on whether this kind of research should be performed, and, if so, under what circumstances."

The Human Fetal Tissue Transplantation Research Panel will consist of approximately 25 individuals with scientific, legal, and ethical expertise; representing a broad range of views and backgrounds. The meeting of the consultants will examine the scientific status of transplantation research involving human fetal tissue and address legal and ethical issues surrounding this area of research. It will be held in Bethesda, Maryland at the NIH. The meeting will be in Building 31, Conference Room 10.

The panel will meet for three days from September 14, 1988, to September 16, 1988. On the first day, the consultant panel will hear presentations concerning the scientific aspects of the research under consideration. On the second day, the consultants will hear presentations concerning the legal and ethical aspects of the research under review. These two days will be open to the public (subject to space available).

As part of these deliberations, the late afternoon of September 14 and morning of September 15 will be devoted to a public hearing in which the consultants will receive testimony from interested organizations. Due to limitations on time and space available, only organizations may apply to present testimony in person at the meeting; and only one representative from each organization may present testimony. Presentations will be scheduled on a first come, first served basis. Oral statements will be limited to 7 minutes maximum. Organizations wishing to present oral

testimony should notify Ms. Barbara Harrison, National Institutes of Health, Shannon Building, Room 228, 9000 Rockville Pike, Bethesda, MD 20892, in writing, no later than August 1. This notification must be accompanied by a one- or two-page summary of the testimony to be presented and a brief description of the organization that is being represented. These written statements will be distributed to the panel in advance of the meeting. If the number of organizations wishing to present oral testimony exceeds the time available, written one- or two-page statements from organizations applying after the schedule has been filed will be distributed to the consultants for consideration.

Individuals who wish to present their personal views may also send one- or two-page statements no later than August 1 to Ms. Harrison. All statements received will be distributed to the consultants for consideration. Only one- or two-page statements will be considered.

The third day's session will be closed to the public to allow the consultants to conduct a working session prior to reporting their views to the Advisory Committee to the Director, NIH. The Advisory Committee will, following a public meeting on the consultants' report(s), prepare a final report to the Director, NIH.

Dated: June 23, 1988.

William F. Raub,

Acting Director, NIH.

[FR Doc. 88-14673 Filed 6-28-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; National Arthritis Advisory Board; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Arthritis Advisory Board on July 11, 1988, from 8:30 a.m. to adjournment at 3 p.m., at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat arthritis. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. John R. Abbott, Executive Director, National Arthritis Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-0801, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: June 23, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88-14674 Filed 6-28-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1820]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: June 23, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Contractor's Report of Sales.

Office: Public and Indian Housing.

Description of the need for the Information and its Proposed use: The Contractor's Report of Sales (HUD-52810) provides the total dollar volume of the Public Housing Agencies' (PHAs') purchases of supply items under the Consolidated Supply Contract. HUD uses this information to monitor the volume of sales for each product and for the program.

Form Number: HUD-52810.

Respondents: State or Local Governments.

Frequency of Submission: Recordkeeping and Annually.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Contractor's Report of Sales	400		2		1		1,600
Recordkeeping	400		1		2		800

Total Estimated Burden Hours: 2,400.
Status: Reinstatement.
Contact: Michael E. Diggs, HUD, (202) 472–4703, John Allison, OMB, (202) 395–6880.

Date: June 17, 1988.

Proposal: Interim Rule for the Section 8 Certificate Project-Based Assistance Program.
Office: Housing.

Description of the Need for the Information and its Proposed use: The interim rule establishes the regulations under which a Public Housing Agency (PHA) may provide Section 8 project-based assistance from assistance provided to the PHA for the Section 8 Certificate Program. HUD can permit a PHA to "attach to structures" up to 15 percent of the Section 8 existing housing assistance provided by the PHA. Owners must agree to rehabilitate the structure with funds not provided under the U.S. Housing Act of 1937.
Form Number: None.
Respondents: State or Local Governments.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
PHA Request for Aproval	200		1		2		400
Financial Statement	10		1		2		20
Work Requirement	100		1		2		400
PHA Notification to Families	50		1		½		25
Owner Notification of Completion	100		1		5		500

Total Estimated Burden Hours: 1,445.
Status: New.
Contact: Myra E. Newbill, HUD, (202) 755–6887, John Allison, OMB, (202) 395–6880.

Date: June 23, 1988.

[FR Doc. 88–14636 Filed 6–28–88; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Susanville District Grazing Advisory Board, Susanville, CA

AGENCY: Bureau of Land Management, Interior.
ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Susanville District Grazing Advisory Board, created under the Secretary of the Interior's discretionary authority on May 14, 1986, will meet on August 1, 1988.

The meeting will begin at 10:00 a.m. at the Susanville District Office of the Bureau of Land Management, 705 Hall Street, Susanville, California.

The agenda on August 1, will include discussion on use of 8100 funds for fiscal year 1989 and out years, a report on progress of range improvement work for fiscal year 1988, an update on the Alturas Integrated Resource Management Plan, an update on the Wild Horse and Burro Program, and a discussion of other items as appropriate.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3:00 p.m. and 4:30 p.m. on August 1, 1988, or file a written statement for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130, by July 20, 1988. Depending on the number of persons wishing to make oral statements, a per person time limit may be established.

Summary minutes of the Board meeting will be maintained in the District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Robert J. Sherve,
Acting District Manager.

[FR Doc. 88–14669 Filed 6–28–88; 8:45 am]
BILLING CODE 4310–40–M

[OR–943–08–4520–12: GP8–170]

Filing of Plats of Survey; Oregon/Washington

AGENCY: Bureau of Land Management, Interior.
ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 23 N., R. 9 E., accepted May 13, 1988
T. 24 N., R. 9 E., accepted May 13, 1988
T. 31 S., R. 6 W., accepted June 3, 1988
T. 38 S., R. 11½ E., accepted June 3, 1988

Washington

T. 6 N., R. 14 E., accepted May 6, 1988
T. 7 N., R. 14 E., accepted May 6, 1988
T. 6 N., R. 15 E., accepted May 6, 1988
T. 7 N., R. 15 E., accepted May 6, 1988

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 825 NE Multnomah, Portland, Oregon 97208, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file their comments with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: June 17, 1988.

B. LaVelle Black,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88–14670 Filed 6–28–88; 8:45 am]
BILLING CODE 4310–33–M

Minerals Management Service

Development Operations Coordination Document; Mobile Exploration & Producing U.S., Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mobile Exploration & Producing U.S. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0478, Block 116, Eugene Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on June 20, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 21, 1988.

J. Rogers Pearcy,

Regional Director Gulf of Mexico OCS Region.

[FR Doc. 88-14671 Filed 6-28-88; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-255]

Report on the Pros and Cons of Initiating Negotiations With Japan To Explore the Possibility of a U.S.-Japan Free Trade Area Agreement

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation, scheduling of hearings, and request for comments.

EFFECTIVE DATE: June 23, 1988.

FOR FURTHER INFORMATION CONTACT: Kim Skidmore Frankena (202-252-1265) or Diane Manifold (202-252-1271), Trade Reports Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

Background

The Commission instituted investigation No. 332-255 following receipt of a letter dated June 15, 1988 from the Senate Committee on Finance, requesting that the Commission conduct an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide a summary of the views of recognized authorities on U.S.-Japan relations on the pros and cons of entering into negotiations with Japan to explore the possibility of establishing a U.S.-Japan free trade area agreement. The Committee requested that the report be submitted by September 16, 1988.

In the letter requesting the investigation, the Committee stated that U.S. Ambassador to Japan Mike Mansfield had suggested in several speeches that joint exploration of the possibility of negotiating a free trade area agreement could serve as a means of developing a more comprehensive and fruitful approach to the resolution of problems in U.S.-Japan trade relations. The Committee letter noted that in January 1988, Senator Robert Byrd met with Japanese Prime Minister Takeshita and proposed that the United States and Japan undertake separate studies on the advantage and disadvantages of initiating negotiations with the ultimate goal of establishing a U.S.-Japan free trade area agreement. The letter said that the Committee understands that the Japanese government has begun several studies on the possible implications of negotiating such an agreement.

As requested by the Committee, the Commission's study will summarize the views of recognized authorities on U.S.-Japan relations on the implications of entering into negotiations with Japan to explore the possibility of establishing a free trade area which could include, in addition to the eventual complete elimination of all tariffs and other restrictive regulations of commerce on substantially all trade between the two countries, the removal of barriers to investment and trade in services, and the guarantee of adequate protection of intellectual property rights. The Committee also requested that if the experts believe there are peculiarities of the Japanese economic and political system which would render the completion of an FTA less than ideally effective, the report should indentify these problem areas and present the experts' suggestions for alternative ways that the United States should approach them.

Public Hearing

A public hearing in connection with this investigation will be held in the Commission Hearing Room, 500 E Street, SW., Washington, DC 20436, beginning at 9:30 a.m. on July 27, 1988. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, no later than noon, July 20, 1988. Prehearing briefs (original and 14 copies) should be filed no later than noon, July 21, 1988. Post-hearing briefs are required by August 3, 1988.

Written Submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than August 3, 1988. All submissions should be addressed to the Secretary of the

Commission at the Commission's office in Washington, DC.

By order of the Commission.

Issued: June 24, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-14643 Filed 6-28-88; 8:45 am]

BILLING CODE 7020-02-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Invitation for Membership on Advisory Committee

The Joint Board for the Enrollment of Actuaries (Joint Board), established under the Employee Retirement Income Security Act of 1974 (ERISA), is responsible for the enrollment of individuals who wish to perform actuarial services under ERISA. The Joint Board has established an Advisory Committee on Actuarial Examinations (Advisory Committee) to assist in its examination duties mandated by ERISA. The term of the current Advisory Committee will expire on November 1, 1988 and the Joint Board proposes to renew such Advisory Committee's charter for a further two year period. This notice describes the Advisory Committee and invites applications from those interested in serving on it.

1. General

To qualify for enrollment to perform actuarial services under ERISA, an applicant must have requisite pension actuarial experience and must satisfy knowledge requirements as provided in the Joint Board's regulations. The knowledge requirements may be satisfied by successful completion of Joint Board examinations in basic actuarial mathematics and methodology, relating to pension plans qualifying under ERISA.

The Joint Board, in cooperation with the Society of Actuaries and the American Society of Pension Actuaries, jointly administer examinations which are acceptable to the Joint Board for enrollment purposes, and which are acceptable to those actuarial organizations as part of their respective examination programs.

2. Purpose

The Advisory Committee plays an integral role in the examination program by assisting the Joint Board in offering examinations which will enable examination candidates to demonstrate the knowledge necessary to qualify for enrollment. The purpose of the Advisory Committee, as renewed, will remain that of assisting the Joint Board in fulfilling this responsibility. The Advisory Committee will discuss the philosophy of such examinations, will review topics appropriately covered in them, and will make recommendations relative thereto. It also will recommend to the Joint Board proposed examination questions. The Joint Board will maintain liaison with the Advisory Committee in this process to ensure that its views of examination content are understood.

3. Function

The manner in which the Advisory Committee functions in preparing examination questions is intertwined with the jointly administered examination program. Under that program, the participating actuarial organizations draft questions and submit them to the Advisory Committee for its consideration. After review of the draft questions, the Advisory Committee selects appropriate questions, modifies them as it deems desirable and then prepares one or more drafts of actuarial examinations to be recommended to the Joint Board. (In addition to revisions of the draft questions, it may be necessary for the Advisory Committee to originate questions of its own and include them in what is recommended.)

4. Membership

The Joint Board will takes steps to ensure maximum practicable representation on the Advisory Committee of points of view regarding the Joint Board's actuarial examinations extant in the community of actuaries. In this regard, appointment will be made from the actuarial community at large and from nominees provided by the actuarial organizations. Since the members of the actuarial organizations comprise a large segment of the actuarial profession, this appointive process ensures expression of a broad spectrum of viewpoints. All members of the Advisory Committee will be expected to act in the public interest, that is, to produce examinations which will help ensure a level of competence among those who will be accorded enrollment to perform actuarial services under ERISA.

Membership normally will be limited to actuaries previously enrolled by the Joint Board. However, individuals having academic or other special qualifications of particular value for the Advisory Committee's work also will be considered for membership. The Advisory Committee will be comprised of not more than nine members.

The Advisory Committee will meet about six times a year. Advisory Committee members should be prepared to devote from 100 to 150 hours, including meeting time, to the work of the Advisory Committee over the course of a year. Members will be reimbursed for travel, meals and lodging expenses incurred, in accordance with applicable government regulations, with respect to their attendance at Advisory Committee meetings.

Actuaries interested in serving on the Advisory Committee should express their interest and fully state their qualifications in a letter addressed to: Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, DC 20220.

Any questions may be directed to the Joint Board's Executive Director at 202-535-6787.

The deadline for accepting applications is September 15, 1988.

Dated: June 23, 1988.

Leslie S. Shapiro,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 88-14644 Filed 6-28-88; 8:45 am]

BILLING CODE 4810-25-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[88-64]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee.

DATE AND TIME: July 20, 1988, 8:30 a.m. to 4 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 625, Federal Office Building 10B, Washington, DC 20546.

FURTHER INFORMATION CONTACT: Ms. Joanne Teague, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2775.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on space systems and technology programs. The Committee, chaired by Mr. Norman R. Augustine, is comprised of 20 members. The meeting will be open to the public

up to the seating capacity of the room (approximately 40 persons including the Committee members and other participants).

Type of Meeting: Open.

Agenda

July 20, 1988

8:30 a.m.—Welcome by Committee Chairman.
8:45 a.m.—Opening Remarks by Acting Associate Administrator.
9 a.m.—Fiscal Year 90 Space Research and Technology Planning.
12:30 p.m.—Response to Photonics Ad Hoc Review.
1 p.m.—Reports of Ad Hoc Task Teams.
2:30 p.m.—Discussion of Manpower Requirements Study.
3:30 p.m.—Discussion of New Ad Hoc Topics.
3:45 p.m.—Summary Session.
4 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-14584 Filed 6-28-88; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on these information collections must be submitted by July 29, 1988.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW, Washington, DC 20506; (202 682-5401).

FOR FURTHER INFORMATION CONTACT: Mr. Murray Welsh, National Endowmnet for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a new collection. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Expansion Arts Program—Rural Arts Initiative.

Frequency of Collection: One-time.

Respondents: State or local governments.

Use: Guideline instructions and applications elicit relevant information from State Arts Agencies that apply for funding under the Rural Arts Initiative. The information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 56.

Estimated Hours for Respondents to Provide Information: 896.

Murray R. Welsh,

Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 88-14662 Filed 6-28-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 6, 1988, through June 17, 1988. The last biweekly notice was published on June 15, 1988 (53 FR 22396).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW, Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 29, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of

Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: May 25, 1988

Description of amendment request: The amendment would delete Figure 6.2-1, "Offsite Organization," and Figure 6.2-2, "Facility Organization," from the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The Carolina Power & Light Company (CP&L) reviewed the proposed change and determined, and the NRC staff agrees, that:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because deletion of the organization charts from the Technical Specifications does not affect plant operation. As in the past, the NRC will continue to be informed of organization changes through other required controls. In accordance with 10 CFR 50.34(b)(6)(i), the applicant's organizational structure is required to be included in the Final Safety Analysis Report. Chapter 13 of the Final Safety Analysis Report provides a description of the organization and detailed organization charts. As required by 10 CFR 50.71(e), CP&L submits annual

updates to the FSAR. Appendix B to 10 CFR Part 50 and 10 CFR 50.54(a)(3) govern changes to the organization described in the Quality Assurance Program. Some of these organizational changes require prior NRC approval. Also, it is CP&L's practice to inform the NRC of organization changes affecting the nuclear facilities prior to implementation.

(2) The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature and no physical alterations of plant configuration or change to setpoints or operating parameters are proposed.

(3) The proposed amendment does not involve a significant reduction in a margin of safety because CP&L, through its Quality Assurance programs, its commitment to maintain only qualified personnel in positions of responsibility, and other required controls, assures that safety functions will be performed at a high level of competence. Therefore, removal of the organization chart from the Technical Specifications will not affect the margin of safety.

Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551 Raleigh, North Carolina 27602.

NRC Project Director: Elinor G. Adensam

The Commonwealth Edison Company, Docket Nos. STN-456 and STN-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: November 26, 1986 and January 14, 1988

Brief description of amendment: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Braidwood Nuclear Power Station to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.F of *Facility Operating License No. NPF-72 and paragraph 2.F of Facility Operating License No. NPF-77 to require compliance with the revised plan.*

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on November 26, 1986 and January 14, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendment is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481

Attorney for licensee: Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois, 60603

NRC Project Director: Daniel R. Muller

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut; Northeast Nuclear Energy Company, et al; Docket Nos. 50-245, 50-336, and 50-423, Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3, New London County, Connecticut

Date of amendment request: May 25, 1988

Description of amendment request: By application dated May 25, 1988, Connecticut Yankee Atomic Power Company and Northeast Nuclear Energy Company (the licensees) requested changes to the Technical Specification (TS) for Haddam Neck and Millstone Units 1, 2 and 3. The proposed change to the TS would provide for uniform addresses for the following classes of reports for Haddam Neck and Millstone Units 1, 2 and 3:

° Routine Reports including Monthly Operating Reports (TS 6.9.1)

° Special Reports (TS 6.9.2)

In addition to the above, the same addresses would apply to reporting of Radial Peaking Factor Limits for Millstone Unit 3 per TS 6.9.1.6.

Basis for proposed no significant hazards consideration determination: On November 6, 1986 the NRC issued a revised Section 50.4, "Written Communications," of 10 CFR Part 50 (51 FR 50306 as amended at 52 FR 31611.) Subsection (a) of 10 CFR 50.4 requires that:

> The signed original of all correspondence, reports, applications, and other written communications from the applicant or licensee to the Nuclear Regulatory Commission concerning the regulations in this part or individual license conditions must be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The proposed changes to TS 6.0.1, 6.9.2, and 6.9.1.6 (Millstone Unit 3, only) would provide consistency with 10 CFR 50.4(a). In addition, the proposed changes to the TS would also require that copies of the subject reports be sent to the Regional Administrator, Region I, and to the NRC Resident Inspector.

On March 6, 1986, the NRC published guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve a significant hazards consideration. One example of amendments not likely to involve significant hazards considerations is example (vii) which involves "A change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The proposed changes to the TS clearly fall within example (vii) noted above. Accordingly, the NRC staff proposes to determine that the proposed changes to TS 6.9.1 and 6.9.2 for Haddam Neck and Millstone Units 1, 2 and 3 and TS 6.9.1.6 for Millstone Unit 3 involve no significant hazards considerations.

Local Public Document Room location: Russel Library, 123 Broad Street, Middletown, Connecticut 06103

and Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Project Director: John F. Stolz

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: January 27, 1988

Description of amendment request: This proposed license amendment would modify the Minimum Channels Operable for the Containment High Range Radiation Monitors to be consistent with NRC Generic Letter 83-86.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of its standards set forth in 10 CFR 50.92 by providing certain examples (51 FR 7751). One example of an amendment not likely to involve significant hazards consideration is (ii), "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement." The proposed amendment matches the example because it would require an additional channel of the Containment High Range Radiation Monitor to be operable. Therefore, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Daniel R. Muller, Acting

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: March 10, 1988.

Description of amendment request: The proposed license amendment would change the Fermi-2 Technical Specifications (TSs) to clarify the Action Statements for operability of an Emergency Equipment Cooling Water (EECW) subsystem, an Emergency Equipment Service Water (EESW) subsystem, and the Ultimate Heat Sink. The proposed change would require associated safety-related equipment to be declared inoperable at the time of discovery rather than 72 hours after discovery of the inoperable cooling subsystem.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7751). One example of an action involving no significant hazards consideration is (ii), "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement." The proposed change is directly related to this example because declaring the equipment inoperable and implementing the Action Statement at the time of discovery of an inoperable EECW/EESW subsystem or Ultimate Heat Sink, rather than 72 hours following the discovery, is more restrictive than the current TSs allow.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Daniel R. Muller, Acting Director.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: March 28, 1988

Description of amendment request: The proposed amendment would modify the Fermi-2 Technical Specifications to change Footnote in Table 1.2 to include the provisions to place the mode switch in the Refuel position to facilitate Source Range Monitor (SRM) and Intermediate Range Monitor (IRM) operability testing.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has made a determination and the Commission's staff agrees that the proposed amendment involves no significant hazards consideration based on the following considerations:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change to place the mode switch in the Refuel position during shutdown (Operational Conditions 3 and 4) to test the rod block functions does not involve a significant increase in the probability or consequences of an accident previously evaluated because the Technical Specifications continue to ensure that the one-rod-out interlock is operable prior to planned rod withdrawal. This prevents withdrawal of more than one control rod from the core. Placing the mode switch in the Refuel position is thus a more conservative action than placing it in the Run or Startup/Hot Standby position as currently allowed. In addition, the change does not result in any modifications to the plant or system operation and no safety-related equipment is altered.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, the proposed change does not modify the plant or system operation and no safety-related equipment is altered. The requested change does not create any new accident mode.

3. The proposed change does not involve a significant reduction in a margin of safety. As stated above, placing the mode switch in the Refuel position to perform SRM and IRM operability testing continues to ensure that no more than one control rod could be withdrawn from the core due to the operability requirements of the one-rod-out interlock. Furthermore, the use of the Refuel position is more conservative than the Run or Startup/Hot Standby positions, which are currently allowed by the Technical Specifications.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Daniel R. Muller, Acting Director

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: May 24, 1988

Description of amendment request: The proposed amendment would change the Fermi-2 Technical Specifications (TSs) based on the guidance provided by the NRC staff in Generic Letter 87-09, dated June 4, 1987. Specifically, the proposed revision would change the restriction against entry into an Operational Condition while relying on the provisions of Action statements. Also, the proposed revision would include a 24-hour delay in implementing Action requirements due to a missed surveillance when the Action requirements provide a restoration time that is less than 24 hours. In addition, the proposed amendment would clarify a potentially confusing TS.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7751). One example of an action involving no significant hazards consideration is (vii), "A change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations". The proposed change is similar to this example in that the proposed TS revisions are based on Generic Letter 87-09, which provides acceptable alternatives for meeting the requirements of 10 CFR 50.36, "Technical Specifications."

Therefore, the Commission proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Daniel R. Muller, Acting

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment requests: December 2, 1986, as supplemented December 1, 1987, January 20, 1988 and April 14, 1988

Description of amendment requests: In accordance with the requirements of 10 CFR 73.55, the Florida Power Corporation submitted amendments to the Physical Security Plan for Crystal River Unit No. 3 to reflect recent changes to that regulation. The proposed amendments would modify paragraph 2.D of Facility Operating License No. DPR-72 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised Plan on December 2, 1986, as supplemented December 1, 1987, January 20, 1988 and April 14, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised Plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and example of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii), "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendments involve no significant hazards considerations.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Attorney for licensee: R. W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P. O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: Herbert N. Berkow

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of amendment request: May 19, 1988

Description of amendment request: The proposed amendment revises Technical Specification (TS) 3.1.1.3, "Moderator Temperature Coefficient" and its bases. Currently, TS require that the moderator temperature coefficient (MTC) be negative. The proposed amendment allows a slightly positive MTC of 0.7 delta k/k/° F up to 70% of rated thermal power (RTP) ramping down to 0 delta k/k/° F at 100% RTP.

The proposed amendment also revises shutdown margin requirements as specified in TS Section 3/4.1, "Reactivity Control Systems," TS Section 3/4.5, "Emergency Core Cooling System," and TS Section 3/4.3, "Instrumentation," and their bases. The proposed changes include:

(1) The refueling water storage Tank (RWST) boron concentration range is being increased from a range between 2,000 ppm and 2,100 ppm to a range between 2,400 ppm and 2,600 ppm.

(2) The accumulators boron concentration range is being increased from a range between 1,900 ppm and 2,100 ppm to a range between 1,900 ppm and 2,600 ppm.

(3) TS Figures 3.1-1 and 3.1-2 are being replaced to reflect revised shutdown margin requirements for higher boron concentration.

(4) The high flux at shutdown alarm is being changed from 3.16 times background to 2.30 times background in table notation 9 of TS Table 4.3-1.

(5) The minimum borated water volume requirement for the RWST in MODES 5 and 6 is being increased from 70,832 to 94,404 gallons.

Basis for proposed no significant hazards consideration determination: The basis for the MTC TS limit is to ensure that the value of the coefficient remains within the limits assumed in the Final Safety Analysis Report (FSAR) accident and transient analyses. In keeping with this basis, the necessary accident and transient analyses have been performed with the new MTC values and show that the results remain within all design and safety criteria.

In order to provide the necessary shutdown margin requirements for future reload cycle designs without the addition of excessive numbers of burnable absorbers, the RWST boron concentration range was increased to 2,400-2,600 ppm. Since the accumulators are normally filled from the RWST, the accumulator boron concentration range was increased to 1,900-2,600 ppm. Maintaining the lower limit at 1,900 in the accumulators will allow for some small amount of dilution of the accumulator water volume from possible back leakage of low boron concentration water from the reactor coolant system (RCS) during normal operation . The new RWST and accumulator boron concentration limits are sufficient to ensure that the borated emergency core cooling systems water volumes, when mixed with the RCS water volume and other sources of water, will result in the reactor core remaining subcritical to meet the loss of coolant accident long term cooling requirements.

The boron dilution analyses for MODES 3, 4, and 5 resulted in revised curves of required shutdown margin as a function of RCS boron concentration. These curves are designed to ensure that the operator will have at least 15 minutes of response time after receipt of the high flux at shutdown alarm before shutdown margin is lost. The reanalyses of boron dilution assume that the high flux at shutdown alarm setpoint is set at 2.30 times background.

Further consideration of the borated water requirements for 18-month reload cycles with high critical boron concentrations required verification of the amount of boric acid required in the RWST during various MODES. Greater volumes of RWST water are needed to provide the same change in shutdown margin at the potentially high initial boron concentrations that may exist in the RCS. It was determined that the RWST water volume required to shut down the plant under normal operating procedures in MODES 5 and 6 needed to be increased from 70,832 gallons to 99,404 gallons.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendment, the licensee has determined the following:

1. The proposed changes do not significantly increase the probability or consequences of previously evaluated accidents. Previously analyzed accidents were reviewed and either evaluated or re-analyzed. The changes did not adversely affect equipment or systems involved in the initiation or mitigation of the previously analyzed accidents. As such, the changes would not significantly increase the probability of such accidents. The accident consequences were either bounded by the previous analyses or increased by a very small amount. In all cases, the results remained within applicable design and safety criteria and the conclusions in the FSAR remained valid. The consequences of previously analyzed accidents, therefore, are not significantly increased.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not introduce any new equipment or require any existing equipment or systems to perform a different type of function than they are currently designed to perform. A new mode of failure is, therefore, not created and a new or different kind of accident is not possible.

3. The proposed changes do not involve a significant reduction in a margin of safety. An evaluation was performed to determine the effects of the proposed changes on the FSAR accident analyses. The results of the evaluation show that all applicable design and safety criteria would be met. The conclusions of the accident analyses in the Vogtle FSAR remain valid, and the safety limits continue to be met. Margins of safety are, therefore, not significantly reduced.

The NRC staff has reviewed the licensee's determination and concurs with its findings.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street, N.E., Altanta, Georgia 30043.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of amendment request: May 19, 1988

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3/4.7.6, "Control Room Emergency Filtration System." The asterisked footnote of TS 3.7.6 would be changed to read as follows:

Note 1: During Control Room Emergency Filtration System testing preceding removal of the temporary control room wall, the Unit 1 Control Room/Unit 2 Control Room differential pressure requirement of Specification 4.7.6.e.3 is waived. The waiver is contingent upon the capability to shut down the applicable Unit 2 heating, ventilation and air conditioning (HVAC) systems and close the applicable Unit 1/Unit 2 HVAC Isolation dampers within 4.5 minutes after receipt of a Unit 1 Control Room Isolation signal.

In addition, three more footnotes would be added to TS 3.7.6 that read as follows:

Note 2: After commencement of Unit 1 Control Room Emergency Filtration System flow balancing for two-unit operation, verification of control room pressurization in accordance with Specification 4.7.6.e.3 is waived for a period not to exceed 7 days. This waiver is contingent upon receipt of acceptable test results for control room pressurization testing prior to breaching the temporary control room wall.

Note 3: Unit 2 Control Room Emergency Filtration System Fans (2-1531N7-001 and 2-1531-N7-002) shall be controlled to prevent operation following the completion of the initial two unit control room pressurization test (pursuant to Specification 4.7.6.e.3) after removal of the temporary control room wall.

Note 4: At least one Unit 2 Control Room isolation damper (2HV-12114 or 2HV-12115) shall be locked closed and both Unit 1 Control Room isolation

dampers (1HV-12114 and 1HV-12115) shall be locked open. The Unit 2 Control Room isolation dampers (2HV-12114 or 2HV-12115) may be opened when the Unit 1 Control Room Emergency Filtration System is operating in the emergency (pressurization) mode.

Also, the maximum control room air temperature in TS 4.7.6 will be revised from 80° F to 85° F, and the maximum control room pressurization flow in TS 4.7.6 will be revised from 850 cfm to 1500 cfm.

Basis for proposed no significant hazards consideration determination: Vogtle Unit 1 is protected from Unit 2 construction and testing activities by the existence of physical barriers and administrative controls. In particular, the Unit 1 and Unit 2 control room areas are separated by a temporary wall and the HVAC systems are separated by a series of dampers, removed duct sections, and caps on open ducts. After the Protected/Vital Area is extended to include the Unit 2 portion of the control room, the licensee proposes to remove portions of the temporary wall prior to the scheduled Unit 1 refueling outage. A plan has been developed for wall removal with a minimum of disruption to Unit 1 operation.

During the period that the temporary wall is dismantled, Unit 1 is operating, and Unit 2 has not yet received an operating license, operation of the Unit 2 control room emergency filtration system (CREFS) must be restricted to assure that the Unit 1 CREFS would be capable of performing its intended function. The Unit 2 outside air intake will be maintained closed during this period since the instrumentation in the flow path which initiates control room isolation will not be continuously operable. Operation of the Unit 2 CREFS will be prevented to assure that, in the event of a Unit 1 control room initiation (CRI), operation of an excessive number of CREFSs will not lead to fan damage from unstable operation or unacceptable control room doses. The Unit 1 outside air flowpath is provided with two redundant chlorine detection systems and two redundant radiation monitoring systems. The chlorine detection systems are inoperable and the Unit 1 control room isolation dampers are maintained open as discussed in licensee event report 50-424/1987-044. Each safety injection signal for Unit 1 will initiate its associated CRI signal thereby actuating the associated CREFS and isolating the normal HVAC system.

The added volume of the Unit 2 portion of the control room necessitates an increase in the maximum pressurization flow rate from 850 to 1500 cfm. Additional heat loads from the Unit 2 portion of the control room require that the maximum control room air temperature be increased from 80 to 85° F.

The Commission has provided Standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendment, the licensee has determined the following:

1. The proposed change will not significantly increase the probability or consequences of an accident previously evaluated. The change affects only systems, components, and procedures which function to mitigate the consequences of an accident; that is, they function after the accident has been initiated. The change therefore does not increase the probability of any accident previously evaluated. The control room interface with the environment at the Unit 2 boundary will continue to be physically isolated (by dampers in lieu of the temporary wall and duct caps) and the capability to pressurize the control room to at least 1/8 inch water gauge with respect to adjacent areas is maintained. The control room continues to meet 10 CFR Appendix A GDC 19 and the consequences of accidents previously evaluated are not increased.

2. The proposed change does not create the possibility of a new or different kind of accident than any accident previously evaluated. The wall removal procedure contains adequate precautions to preclude any threat to control room habitability while the work is being performed.

The Unit 2 CREFS are not required to function or to be operated after control room wall opening until receipt of the Unit 2 operating license and Technical Specifications. The Unit 2 CREFS will be controlled to prevent their operation during this time period. The CREFS ductwork, dampers, and controls for each unit are designed, procured, and installed to the same specifications and procedures, thus, there are no new types of hardware which might introduce the possibility of a new accident.

3. The proposed change does not significantly reduce a margin of safety. During wall removal and HVAC balancing, redundant Unit 1 CREFS trains will be available. The dampers which will replace the duct caps as HVAC boundaries will be leak tested to assure adequate isolation capability. The extension of the time limit for demonstrating CREFS operability will not reduce safety margins because prerequisite steps will provide a high degree of assurance of operability.

The revision of the maximum control room temperature from 80° to 85° F has been reviewed and found to have no significant impact on the qualified life of equipment in the control room. The revision to the maximum control room pressurization flow rate provides adequate outside air to pressurize the two unit control room without exceeding 10 CFR 50 Appendix A GDC 19 dose limits. Margins of safety are, therefore, not significantly reduced.

The NRC staff has reviewed the licensee's determination and concurs with its findings.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards considerations.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street, N.E., Altanta, Georgia 30043.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of amendment request: May 19, 1988

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.2.2, "Heat Flux Hot Channel Factor - $F_Q(z)$." The revision would change $F_Q(z)$ from 2.30 to 2.25 at 100% power, and from 4.60 to 4.50 at 50% power or less. The bases to TS 3.2.1, "Axial Flux Difference" would also be revised to reflect the change in $F_Q(z)$

Basis for proposed no significant hazards consideration determination: The current large break Loss of Coolant Accident (LOCA) analysis for Plant Vogtle was performed in April 1983 and assumed a containment spray system (CSS) flowrate of 6400 GPM. This proposed amendment reduces $F_Q(z)$ to 2.25 to account for an actual CSS flow

rate of 6569 GPM which was determined based on plant startup data. The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendment, the NRC staff has determined the following:

1. The proposed change will not significantly increase the probability or consequences of an accident previously evaluated. The proposed reduction in $F_Q(z)$ to 2.25 is to compensate for an actual CSS flowrate of 6569 GPM.

The proposed $F_Q(z)$ would be expected to result in at least a 50° F reduction in PCT when reanalyzed with the 1981 Westinghouse Large Break Evaluation Model used for the original Vogtle Large Break LOCA calculation.

The reduction in $F_Q(z)$ will increase the margins of safety for the non-LOCA analyses, due to the reduction in peak local power density.

Therefore, the proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the physical plant is not being changed.

3. The proposed change does not significantly reduce a margin of safety. The proposed reduction in $F_Q(z)$ reduces the peak clad temperature and provides greater margin to the limits on peak local power density.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street, N.E., Altanta, Georgia 30043.

NRC Project Director: David B. Matthews

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: May 26, 1988

Description of amendment request: The May 26, 1988 request, identified as TSCR No. 168 by the licensee, would revise various sections in Chapter 6 of the Technical Specifications (Administrative Controls) for clarity and consistency with the Standard Technical Specifications. These sections deal with GPU procedural controls over the review process for procedures, modifications to structure, systems and components, and proposed tests and experiments. This change would also add a definition of substantive changes as related to these activities.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The change proposed by TSCR No. 168 is an administrative change to achieve terminology more consistent with the terminology of the General Electric Boiling Water Reactors Technical Specification, NUREG-0123 Rev. 3, and to provide clarification of previously existing requirements for technical and safety review. The proposed revised Technical Specifications would not involve significant hazards considerations for reasons as follows (see criteria in 10 CFR 50.92 above):

(1) The probability of occurrence or the consequences of previously evaluated accidents are not affected by this change since the change is administrative in nature, and provides clarification and consistency. The technical and safety review requirements for substantive changes in the existing Technical Specifications are not changed.

(2) The possibility of a new or different kind of accident from any accident previously evaluated is not created by this change, since the change is administrative in nature, and provides clarification and consistency. The technical and safety review requirements for substantive changes in the existing Technical Specifications are not changed.

(3) This change does not reduce the margin of safety, since the change is administrative in nature, and is provided for clarification and consistency. The technical and safety review requirements for substantive changes in the existing Technical Specifications are not changed.

Based on the above discussion, the staff proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: John F. Stolz

Illinois Power Company Docket No. 50-461, Clinton Power Station, Unit 1 Dewitt County, Illinois

Date of application for amendment: February 5, 1988

Description of amendment request: This proposed amendment would clarify Technical Specification 3/4.7.2 "Control Room Ventilation System" by adding an Equipment Identification Number (EIN) to Specification 4.7.2.h. This will ensure that the visual inspection (to verify integrity of the noted flexible connection) is performed on the correct fan and thereby eliminates any possibility of misinterpretation of the Specification.

Basis for Proposed No Significant Hazards Consideration Determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

This proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the change is strictly a clarification of an existing Specification. This change

does not affect any previous analyses nor does it alter the intent or implementation of the applicable Technical Specification.

The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change is strictly a clarification of an existing Specification and thus does not affect the plant design or operation.

The proposed change does not involve a significant reduction in a margin of safety. The proposed change is a clarification of an existing Specification and thus does not alter the intent of the existing Technical Specification requirements. The proposed change does not impact plant design and therefore does not affect a margin of safety.

For the reasons stated above, the staff believes the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Sheldon Zable, Esq., of Schiff, Harding & Waite, 720 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606.

NRC Project Director: Leif J. Norrholm

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 2, 1988, as revised June 3, 1988

Description of amendment request: The amendment would change the Technical Specifications by replacing Figure 6.2.1-1, "Offsite Organization," and Figure 6.2.2-1, "Unit Organization," with requirements that capture the essential aspects of the organization structure that are defined by these figures.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

System Energy Resources, Inc. (SERI) has provided an analysis of significant hazards considerations in its request for a license amendment. The licensee has concluded, with appropriate bases, that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because replacement of the organization charts with more general organizational requirements in the Technical Specifications is administrative in nature. No physical alterations of plant configuration or changes to setpoints or operating parameters are proposed. These changes do not alter SERI's commitment to maintain a management structure that contributes to the safe operation and maintenance of the plant. As in the past, the NRC will continue to be informed of organizational changes through other required controls. 10 CFR 50.34(b)(6)(i) requires that the applicants' organizational structure be included in the UFSAR. Chapter 13 of the UFSAR provides a description of the organization and detailed organization charts. As required by 10 CFR 50.71(e), SERI submits annual updates to the UFSAR. The positions which are important to safe operation of the facility will continue to be specified in the Technical Specifications. The position qualifications for the GGNS General Manager, Manager Plant Maintenance, and Manager Plant Support being removed from the Technical Specifications does not change the consequences or probability of a previously evaluated accident because these positions do not exert direct influence upon licensed activities performed at the facility to ensure safe operation. Therefore the probabilty or consequences of any previously evaluated accident are not increased due to this proposed amendment.

(2) The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature, and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed. The same level of position qualifications are maintained and unaltered in the Technical Specifications except for those positions that do not exert direct influence upon licensed activities performed at the facility to ensure safe operation. Therefore the possibility of a new or different kind of previously unevaluated accident has not been created.

(3) The proposed amendment does not involve a significant reduction in a margin of safety. Since the proposed amendment retains those aspects of the organizational charts which are important to safety, removal of the organization charts represents no reduction in the current margin of safety. No position qualifications are being changed in the Technical Specifications except for those positions that do not exert direct influence upon licensed activities performed at the facility to ensure safe operation. Therefore the current margin of safety is not reduced.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Elinor G. Adensam

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-277, Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania

Date of application for amendment: April 21, 1988

Description of amendment request: The proposed amendment would revise Figures 3.5.1.M and 3.5.1.N of the Technical Specifications to correct errors and to revise nomenclature. These figures show the most limiting and the least limiting values of the maximum average planar linear heat generation rate (MAPLHGR) for two of the fuel types (BD319A, BD321A) to be used in Unit 2 for cycle eight. These figures were issued with Amendment No. 123 to the Unit 2 operating license on September 11, 1987. The figures include curves showing the limiting MAPLHGR values versus exposure and also include printed numerical values at

various points on the curves. The licensee states that the curve on Figure 3.5.1.M for BD319A fuel is incorrect. However, the printed values are correct. The licensee states that the curve on Figure 3.5.1.N for BD321A is incorrect. The printed values are correct except for the 12.17 value which is revised to a value of 12.18 as specified in a referenced General Electric report. The licensee proposes to replace these figures with ones which show the correct shape of the curve as well as the printed values.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated since any use of the initially issued figures would result in either the correct limits (e.g., the printed values) or more conservative operating limits than those resulting from the supporting safety analyses.

The possibility of a new or different kind of accident from any accident previously evaluated is not created since the only result is that the results of a previously performed accident and transient analyses were, in part, reflected in a more conservative manner on the initially submitted figures.

A significant reduction in a margin of safety is not involved since any use of the initially submitted figures would have resulted in limits which were consistent with the supporting safety analysis or more conservative than those resulting from the supporting safety analyses.

The proposed change is to replace the figures with figures for which the curves correctly represent the numerical values of the data printed on them. The previously printed data, with one minor revision as noted above, is confirmed by the licensee and is unchanged. None of the underlying safety analyses or their bases are changed. Any error which would potentially have been introduced by use of the incorrect figures would have resulted in more conservative operating limits since the curves were at lower MAPLHGR values than the printed values on the figures.

On March 6, 1986, the NRC published guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve a significant hazards consideration. This change is consistent with one of the examples provided: "(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." This proposed change would correct an error and make minor changes in the nomenclature on the two affected Technical Specification figures.

On the bases discussed above, the NRC staff proposes to determine that this proposed amendment involves no significant hazards considerations.

Local Public Document Room Location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for Licensee: Troy B. Conner, Jr. 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company,

Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: December 1, 1986 and December 16, 1987

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensees submitted amendments to the Physical Security Plan for the Peach Bottom Atomic Power Station, Units 2 and 3, to reflect recent changes to that regulation. The proposed amendments would modify and combine paragraphs 2.C.(4) and 2.C.(4)(c) of Facility Operating License DPR-44 for Unit 2 and would modify and combine paragraphs 2.C.(3) and 2.C.(3)(c) of Facility Operating License DPR-56 for Unit 3 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensees submitted its revised plan on December 1, 1986, and December 16, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Attorney for Licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: March 29, 1988

Description of amendment request: This proposed amendment would delete the requirement to monitor the temperature of the Dew Point Moisture Monitors in Section 4.4 of the Technical

Specifications. Ten years of data acquired by the licensee have shown that this requirement can be safely deleted.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee concluded based upon his safety evaluation that deleting the requirement to monitor the temperatures in the instrument penetrations will not have a deleterious affect on operation of the Dewpoint Moisture system. It is further concluded that the proposed change does not result in an unreviewed safety question. The licensee provided the following analysis:

1. Neither the probability nor consequences of accidents previously evaluated have been affected by this proposed Technical Specification change. The data from the monitoring instrumentation and recording inputs confirmed a valid design basis assumption. Removing the instrumentation does not compromise the system's capability to perform its design function.

2. The possibility of a new or different kind of accident from those previously evaluated has not been introduced. The monitoring instrumentation is completely independent of any Dewpoint Moisture Monitor system control or protective function.

3. No margins of safety have been reduced as a result of the proposed change. The intent of the monitoring was to verify a design basis assumption, which was verified. The remaining conditions to be met provide assurnace that the response time of the system will be adequate, and the operators will be alerted if the sample flow rates are unacceptable.

Based on the evaluation provided above, it is concluded that operation of Fort St. Vrain in accordance with the proposed changes will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of a significant reduction in any margin of safety Therefore this change will neither create an undue risk to the health and safety of the public nor involve any significant hazards consideration.

The staff has reviewed the licensee's analysis above and agrees with their conclusions. Therefore, the staff proposes to determine there are no significant hazards considerations involved.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Attorney for licensee: Byrant O'Donnell, Public Service Company of Colorado, P. O. Box 840, Denver, Colorado 80201-0840

NRC Project Director: Jose A. Calvo

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: April 20, 1988

Description of amendment request: This proposed amendment would delete a reference in the Technical Specifications Appendix B to 10 CFR 51.5(b)2, which has been deleted from Title 10 of the Code of Federal Regulations. Deletion of this reference does not alter the requirements contained in Appendix B of the Fort St. Vrain (FSV) Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has proposed that the changes do not involve a significant hazards consideration because operation in accordance with this change would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated. This change only eliminates a reference to a section of 10CFR which no longer exists. The methodology in which an unreviewed environmental question is determined is not altered by this change. Therefore, this change cannot increase the probability or consequences of an analyzed accident.

(2) create the possibility of a new or different kind of accident from any accident previously evaluated. No new or different kind of accident is created because this change only deletes an erroneous reference from Appendix B of the FSV Technical Specifications.

(3) involve a significant reduction in a margin of safety. Determination of an unreviewed environmental question for changes, tests and experiments at FSV will continue to be performed in accordance with Appendix B of the Technical Specifications. This will ensure no margin of safety is reduced.

The staff has reviewed the above basis for no significant hazards determination submitted by the licensee. The staff agrees with the licensee's analysis and proposes to determine that no significant hazards considerations are involved.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Attorney for licensee: Byrant O'Donnell, Public Service Company of Colorado, P. O. Box 840, Denver, Colorado 80201-0840

NRC Project Director: Jose A. Calvo

Southern California Edison Company, et al,, Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: August 27, 1987

Description of amendment request: The proposed amendment would revise the Technical Specifications to (1) incorporate changes in the licensee's organization, (2) incorporate changes to recent NRC correspondence requirements, (3) resolve conflicts in reporting requirements, and (4) revise audit requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91, the licensee has provide its analysis as to whether or not the proposed amendment involves a significant hazards consideration and has concluded that the proposed changes do not constitute a significant hazards consideration, based on the following discussion.

(1) Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequence of an accident previously evaluated? Response: No. This proposed change is administrative in nature and is primarily necessary to resolve inconsistencies in the technical specifications. The revision to the audit requirements section is not expected to reduce the audit effectiveness since the result is that the problem areas will receive additional audit attention.

(2) Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from accident previously evaluated? Response: No. This proposed change is administrative in nature and is primarily necessary to resolve inconsistencies in the technical specifications. The revision to the

audit requirements section is not expected to reduce the audit effectiveness since the result is that the problem areas will receive additional audit attention.

(3) Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety? Response: No. This proposed change is administrative in nature is primarily necessary to resolve inconsistencies in the technical specifications. The revision to the audit requirements section is not expected to reduce the audit effectiveness since the result is that the problem areas will receive additional audit attention.

The Commission has provided guidance concerning the application of criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations (51 FR 7751). One of the examples is example (i): a purely administrative change to technical specifications; for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.

Those portions of the proposed change relating to organizational changes, correspondence and reporting requirements satisfy Example (i) of the examples of amendments that are considered not likely to involve significant hazards consideration in that they relate to purely administrative changes to the technical specifications; for example: deletion of the Offsite organization chart and addition of a reference to the chart contained in Chapter 13 of the San Onofre Units 2 and 3 FSAR; replacement of a reference to Section 6.6 with a reference to Section 6.9.2 to provide for consistency in the technical specification reference to Section 6.9.2 Special Report requirements; a numbering change to resolve a conflict introduced by the issuance of Amendment No. 91; a change to resolve an inconsistency in Section 6.9.2 (Special Report)concerning reporting requirements; and a revision to Section 6.0 audit requirements to allow audit personnel to perform audits on a schedule and to a level of detail commensurate with past experience, and consistent with the practice in other areas.

The NRC staff has reviewed the request and the licensee's analysis and agrees that the criteria appear to be satisfied. The NRC staff, therefore, proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P. O. Box 19557, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: George W. Knighton

Southern California Edison Company, et al., Docket Nos. 50-206, 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 1, 2, and 3 San Diego County, California

Date of amendment requests: December 2, 1986, supplemented December 18, 1987 and April 22, 1988.

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted amendments to the Physical Security Plan for the San Onofre Nuclear Generating Station, Units 1, 2 and 3 to reflect recent changes to that regulation. The proposed amendment would modify each operating license to require compliance with the revised plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986, the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plant to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 2, 1986, December 18, 1987 and April 22, 1988 to satisfy the requirements of the amended regulations. The Commission proposes to amend the licenses to reference the revised plan.

In the supplementary materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards consideration and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendments involve no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P. O. Box 19557, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: April 20, 1988 (TS 239)

Description of amendment requests: The proposed amendment would change the Browns Ferry Nuclear Plant (BFN) Technical Specifications (TS) for Units 1, 2, and 3 to incorporate the requirements of 10 CFR 50.62 Paragraph (c)(4), Anticipated Transients Without Scram (ATWS Rule). The proposed amendment would specifically make the following changes.

1. The amendment would revise the availability requirement for the Standby Liquid Control System (SLCS). It currently requires the SLCS to be operable whenever the reactor is not in a shutdown condition with all operable control rods fully inserted. The proposed TS will require the SLCS to be operable whenever the reactor is not in a shutdown condition with TS 3.3.A.1 (REACTIVITY CONTROL - Reactivity Limitations, Margin-Core Loading) satisfied.

2. The TS Section for SLCS is changed to restate the cold shutdown requirement in terms of the total amount of Boron-10 available and a maximum concentration limit for the SLC solution. This will replace the current concentration versus volume and concentration versus temperature curves that are in the TS. The proposed amendment will also add an equivalency equation and related surveillance requirements to ensure that the ATWS rule is met for the BFN SLCS.

3. The shutdown requirement due to total SLCS inoperability is changed to

allow eight hours to make one subsystem operable or place the reactor in shutdown in the following 12 hours from the current 24 hours to shutdown.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has presented its determination of no significant hazards consideration as follows:

NRC has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards considerations exist. A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from an accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

1. The proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated because the SLCS capability to insert negative reactivity is enhanced by operating it with the new enriched solution. The revised technical specification will ensure a level of SLCS reliability comparable to or superior to that of the existing requirements. Finally, having the reactor in a shutdown condition with the required reactivity margin satisfied obviates the need for the SLCS just as effectively as requiring all operable control rods to be inserted.

2. The proposed revisions do not create the possibility of a new or different kind of accident from any accident previously evaluated because operating the SLCS in accordance with the revised technical specifications does not adversely impact any previous accident analysis. The enrichment of the SLC solution and corresponding technical specification revisions do not adversely affect any other safety-related systems or the primary coolant system boundary and, therefore, cannot create a different kind of accident.

3. The proposed revisions do not involve a significant reduction in the margin of safety because the revised technical specifications provide the Limiting Conditions for Operations (LCO) and Surveillance Requirements necessary to ensure that the SLCS with the new solution will perform its function with the same or superior level of reliability. In addition, the new solution will shutdown the reactor faster than the existing solution, consequently enhancing the plant's capability of responding to an ATWS event.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: June 13, 1988 (TS 244)

Description of amendment requests: The proposed amendments would modify Technical Specification Table 3.7.A to change the maximum operating time for the inboard low pressure coolant injection (LPCI) valves FCV 74-53 and FCV 74-67 from 30 seconds to 40 seconds.

Basis for proposed no significant hazards consideration determination: In order to meet the environmental qualification requirements of 10 CFR 50.49, modifications were performed on LPCI injection valves FCV 74-53 and FCV 74-67 which resulted in increasing the valve stroke times from 30 seconds to 40 seconds. A comprehensive loss of coolant analysis (LOCA) was performed with the new valve stroke times. The evaluation also examined the impact of extended valve stroke times on non-LOCA events, other safety functions of the valves, and offsite dose calculations. This evaluation demonstrated that the extended valve stroke times will not have a significant impact on the worst case LOCA analysis. Furthermore, the increased valve stroke time will not result in any changes in the Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) for all fuel types at the Browns Ferry Nuclear Plant.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

NRC has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

1. The proposed amendment does not involve a significant increase in the probability or consquences of any accident previously evaluated. The change only modifies the performance and acceptance criteria for the valves. The safety functions of the valves remain unchanged.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Changing the performance criteria of the valves in terms of valve stroke time does not create any accident or malfunction of a different type. It only changes the time of occurrence for LPCI response during an accident event previously documented in the Final Safety Analysis Report (FSAR). The change presents an insignificant impact in terms of overall plant safety.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The consequences of various accident events with the new stroke time have been evaluated and have been demonstrated to have no impact on MAPLHGR for all fuel types.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Acting Assistant Director: Rajender Auluck

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of amendment requests: June 17, 1988 (TS 246)

Description of amendment requests: The Tennessee Valley Authority (TVA) proposes to revise Section 6, Administrative Controls, of the Browns Ferry Nuclear Plant (BFN), Units 1 and 2, Technical Specifications (TS). The revision proposes to delete the two organization charts in Figures 6.2-1 and 6.2-2 of Section 6 and in their place revise Section 6.2 in accordance with Generic Letter (GL) 88-06, Removal of Organization Charts from Technical Specification Administrative Control Requirements, dated March 22, 1988. In addition, TVA has proposed to replace the title "Manager of Nuclear Power" by the title "Senior Vice President/Nuclear Power" in several paragraphs within Section 6 and delete references to either Figure 6.2-1 or 6.2-2.

Basis for proposed no significant hazards consideration determination: GL 88-06 was issued to provide guidance to licensees to delete their organization charts from the TS. The deletion of the organization charts from the TS and the addition of general organization requirements to the TS should eliminate the need for a license amendment to implement organization name changes or changes in lines of authority and responsibility. The title change proposed for the Manager of Nuclear Power in the TS is made to reflect a change to be made in TVA corporate management titles.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

NRC has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

(1) This proposed change is administrative in nature and intended to eliminate the need for NRC approval of a license amendment before implementing an organizational change. The functions important to safety previously provided by the organization charts specified in Section 6 have been retained. There are no hardware or procedure changes that could adversely affect the probability of occurrence or the consequences of any accident previously evaluated.

(2) This change does not create the possibility of a new or different kind of accident than that previously evaluated. The change is administrative and follows the guidance contained in Generic Letter 88-06. The amendment does not change the operation of the facility. The functions important to safety will continue to be performed by those individuals who are technically competent to perform these functions.

(3) General organizational requirements will be maintained in the technical specifications. Other aspects of the organization charts which are important to safety are covered by other specifications. Thus the removal of the organizational charts from the technical specifications represents no reduction in safety requirements and no reduction in the safety margin.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Acting Assistant Director: Rajender Auluck

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: June 9, 1988 (TS 88-05)

Description of amendment requests: The Tennessee Valley Authority (TVA) proposes to revise Surveillance Requirements 4.0.3 and 4.0.4 in the Sequoyah (SQN) Units 1 and 2 Technical Specifications (TS). The bases for these requirements is proposed to be revised also.

The following provides a description of each proposed change.

1. Surveillance Requirement (SR) 4.0.3

Clarification statements have been added to SR 4.0.3 to include a 24-hour delay to action requirements to permit completion of a missed surveillance when the limits of the action requirements are less than 24 hours.

2. Bases to Specification 4.0.3

Additional clarification statements have been added and expanded to define the basis for the 24-hour allowance. The bases state that, if the surveillance is not completed within the 24-hour allowance, the time limits of the action requirements are applicable at that time. When a surveillance is performed within the 24-hour allowance and the surveillance requirements are not met, the time limits of the action requirements are applicable at the time the surveillance is terminated.

3. SR 4.0.4

A clarification statement has been added to note that the provisions of specification 4.0.4 shall not prevent passage through or to operational modes as required to comply with action requirements.

4. Bases to Specification 4.0.4

The bases to Specification 4.0.4 have been modified to better define the specific conditions under which surveillance requirements must be met. The first condition applies to plant startups. Under this condition, all applicable surveillance requirements must be performed within the specified surveillance interval to ensure that the limiting conditions for operation (LCO) are met.

The second condition applies to when a plant shutdown is required to comply with action requirements. Under this condition, the provisions of specification 4.0.4 for performance of applicable surveillances do not apply because this would delay placing the facility in a lower mode of operation.

Basis for proposed no significant hazards consideration determination: By letter dated June 9, 1985, TVA proposed TS 88-05 to implement parts of Generic Letter 87-09, "Sections 3.0 and 4.0 of the Standard Technical Operation and Surveillance Requirements," dated June 4, 1987. As a part of Specifications (STS) on the Applicability of Limiting Conditions for recent initiatives to improve Technical Specifications (TS), the NRC, in cooperation with the Atomic Industrial Forum (AIF), developed a program for TS improvements. One of the elements of this program is the implementation of short-term improvements to resolve immediate concerns that have been identified in investigations of TS problems by both NRC and AIF. The guidance provided in this generic letter addressed three specific problems that have been encountered with the general requirements on the applicability of Limiting Conditions for Operation (LCO) and Surveillance Requirements in Sections 3.0 and 4.0 of the STS. The staff

concluded that these modifications will result in improved TS for all plants and licensees were encouraged to propose changes to their TS.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

TVA has evaluated the proposed TS change 88-05 and determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature and do not impact or affect plant hardware. The improvements provided by these changes could decrease the probability of a plant transient by minimizing unnecessary plant shutdowns. The clarification of specifications 4.0.3 and 4.0.4 eliminates a conflict that could: (1) increase the potential for a plant upset, and/or (2) challenge plant safety systems. Consistent application of these administrative specifications will reduce the potential for human error during plant shutdowns and will result in a safer conduct of operation. These changes will in no way affect the operability of plant equipment or hardware. Consequently, the level of safety is not reduced.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

No new accident scenarios will be created by these changes because the proposed changes are administrative in nature and do not impact or affect plant hardware. The administrative change to specification 4.0.3 for allowing a 24-hour delay of action requirements provides a practical time limit for completing a missed surveillance. The alternative to delaying the action requirement would be to attempt the performance of the missed surveillance in a time interval less than 24 hours (i.e., some action requirements have corrective time intervals of only one or two hours). The time constraints imposed by the [current] action requirement for completing a missed surveillance create the potential for a plant transient and challenge to safety systems.

The administrative change to specification 4.0.4 will clarify the conditions under which the provisions of this specification apply. The new provisions of specification 4.0.4 remove the time restrictions for performing surveillance during the shutdown process and allows the shutdown action requirements to take precedence over the surveillance requirements. These provisions prevent delays in placing the facility in a lower mode of operation and remove the pressure on the plant staff to expeditiously complete required surveillance. This results in a safer, more controlled operational environment during plant shutdowns. The possibility for a new or different kind of accident from any previously analyzed has not been created.

(3) Involve a significant reduction in a margin of safety.

The provisions of specification 4.0.4 have been modified to allow the shutdown action requirements to take precedence over the surveillance requirements. This is desirable because it prevents a delay in the shutdown of the facility resulting from the performance of surveillances. This administrative change raises the margin of safety by removing the potential for human error and plant upsets that could occur during the performance of surveillances.

Specification 4.0.3, which provides the 24-hour delay for performance of a missed surveillance, will increase the margin of safety by providing a reasonable time limit for the completion of a missed surveillance. Completing missed surveillances within narrow timeframes of less than 24 hours places an undue demand on the plant staff and increases the risk of a plant upset and challenge to safety systems.

By allowing the 24-hour delay to complete missed surveillances, unnecessary shutdowns and plant transients are averted.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Acting Assistant Director: Rajender Auluck

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: June 13, 1988 (TS 88-10)

Description of amendment requests: The Tennessee Valley Authority (TVA) proposes to modify the Sequoyah (SQN) Units 1 and 2 Technical Specifications (TS) to revise the testing requirements for the turbine driven auxiliary feedwater pump (TDAFWP). In addition, an outdated footnote is being deleted. Each proposed change is described in detail below.

1. A footnote 13 is being added to Table 3.3-5. It will apply to items 2.f, 3.f, 4.f, 5.f, 6.f, 9.b, 10.a and 11.a. It indicates that the provisions of Specification 4.0.4 are not applicable for entry into Mode 3 for the TDAFWP.

2. A footnote is being added to Surveillance Requirement (SR) 4.7.1.2.b to indicate that the provisions of Specification 4.0.4 are not applicable for entry into Mode 3 for the TDAFWP.

3. An outdated footnote is being deleted from Table 3.3-5, Item 12, and Note 10. This footnote identified scheduling requirements for a modification that is now complete.

4. The wording of Unit 2 SR 4.7.1.2.b.2 is revised. The change makes the Unit 2 SR wording consistent with Unit 1 and the Westinghouse Standard Technical Specifications (STS).

Basis for proposed no significant hazards consideration determination: TVA stated the following in its submittal:

The reactor must be in mode 3 in order to achieve the necessary steam conditions to operate the TDAFWP at rated conditions. SR 4.7.1.2.a.2 recognizes this fact and allows entry into mode 3 to perform TDAFWP testing. The response time testing requirements in Table 3.3-5 and SR 4.7.1.2.b do not clearly allow for entry into mode 3 to perform the special testing. No specific exemption to specification 4.0.4 is identified. Specification 4.0.4 requires performance of the SR before entry into the applicable modes.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

TVA has evaluated the proposed technical specification change and determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes to Table 3.3-5 and SR 4.7.1.2.b correct an inconsistency in the SRs for the TDAFWP. The proposed changes allow for entry into Mode 3 to perform response time and actuation signal testing for the TDAFWP. Valid testing cannot be performed until the necessary secondary steam supply conditions are present in M 3. The proposed changes do not reduce the overall system requirements for the TDAFWP because SR 4.7.1.2.a already has the provisions for entry into Mode 3 to perform TDAFWP testing. Because the overall system requirements for the TDAFWP are not reduced, the change does not increase the probability or consequences of any

accident previously evaluated. Testing the TDAWFP under conditions that are representative of the plant conditions that would be present whenever the TDAFWP would be expected to perform its safety-related function may actually improve system reliability and possibly decrease the probability or consequences of any accident previously evaluated.

The deletion of the outdated footnote is administrative in nature. The footnote serves no purpose now that the modification discussed in the footnote is installed. The wording change made to the Unit 2 SR is also administrative. The revised wording is consistent with the Unit 1 and STS SR wording. These proposed changes have no effect on any plant system. Because no plant system is affected, the changes do not increase the probability or consequences of any accident previously evaluated.

(2) create the possibility of a new or different kind of accident from any previously analyzed. The proposed changes to Table 3.3-5 and SR 4.7.1.2.b correct an inconsistency in the SRs for the TDAFWP. The proposed changes allow for entry into Mode 3 to perform response time and actuation signal testing for the TDAFWP. Valid testing cannot be performed until the necessary secondary steam supply conditions are present in mode 3. The proposed changes do not reduce the overall system requirements for the TDAFWP because SR 4.7.1.2.a already has the provisions for entry into Mode 3 to perform TDAFWP testing. Because the overall system requirements for the TDAFWP are not reduced, the change does not create the possibility of a new or different kind of accident from any previously analyzed.

The deletion of the outdated footnote is administrative in nature. The footnote serves no purpose now that the modification discussed in the footnote is installed. The wording change made to the unit 2 SR is also administrative. The revised wording is consistent with the unit 1 and STS SR wording. These proposed changes have no effect on any plant system. Because no plant system is affected, the changes do not create the possibility of a new or different kind of accident from any previously analyzed.

(3) involve a significant reduction in a margin of safety. The proposed changes to Table 3.3-5 and SR 4.7.1.2.b correct an inconsistency in the SRs for the TDAFWP. The proposed changes allow for entry into mode 3 to perform response time and actuation signal testing for the TDAFWP. Valid testing cannot be performed until the necessary secondary steam supply conditions are present in mode 3. The proposed changes do not reduce the overall system requirements for the TDAFWP because SR 4.7.1.2.a already has the provisions for entry into mode 3 to perform TDAWFP testing. Because the overall system requirements for the TDAFWP are not reduced, the change does not reduce the margin of safety. Testing the TDAFWP under conditions that are representative of the plant conditions that would be present whenever the TDAFWP would be expected to perform its safety-related function may actually improve system reliability and possibly increase the margin of safety.

The deletion of the outdated footnote and the wording change are administrative in nature. Because no plant system is affected, the change has no impact on the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Acting Assistant Director: Rajender Auluck

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: June 13, 1988 (TS 88-12)

Description of amendment requests: The Tennessee Valley Authority (TVA) proposes to revise Section 6, Administrative Controls, of the Sequoyah Units 1 and 2 Technical Specifications (TS). The revision proposes to delete the two organization charts in Figures 6.2-1 and 6.2-2 of Section 6 and in their place revise Section 6.2 in accordance with Generic Letter (GL) 88-06, Removal of Organization Charts from Technical Specification Administrative Control Requirements, dated March 22, 1988. In addition, TVA has proposed to replace the title "Manager of Nuclear Power" by the title 'Senior Vice President/Nuclear Power" in several paragraphs within Section 6 and delete references to either figure 6.2-1 and 6.2-2.

Basis for proposed no significant hazards consideration determination: The GL 88-06 was issued to provide guidance to licensees to delete their organization charts from the TS. The deletion of the organization charts and the addition of general organization requirements to the TS should eliminate the need for a licensee amendment to implement some organization name changes or changes in lines of authority and responsibility. The title change proposed for the Manager of Nuclear Power in the TS is made to reflect a change to be made in TVA corporate management titles when the TS change is effective.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

TVA has evaluated the proposed TS change and determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated. This proposed change is administrative in nature and is intended to eliminate the need for NRC approval of a license amendment before implementation of an organization change. The changes to titles and references are also administrative in nature. The functions specified in Section 6 important to the safe operation of SQN have not been altered or deleted. There are no hardware, procedure, personnel, or analysis changes represented by this proposal that adversely affect the probability of occurrence or the consequences of an accident previously evaluated in the safety analysis report.

(2) create the possibility of a new or different kind of accident from any previously analyzed. This proposed change is administrative in nature and is intended to eliminate an unnecessary expediture of resources to facilitate organization changes. The changes to titles and references are also administrative in nature. The function important to safety will continue to be performed by those individuals who are technically competent to perform these functions; therefore, the potential for the increase of a possibility of an accident or a new or different type of accident is reduced rather than increased because of having the appropriate personnel designated for these functions.

(3) involve a significant reduction in a margin of safety. Because general organization requirements will be maintained in the TS, removal of the organizational charts represents no reduction in current safety requirements. These changes will simply allow the implementation of changes in the organization structure without obtaining NRC approval. The changes to position titles and group references, as an administrative change, will also not reduce the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed as opposed to TVA's conclusion that the "potential for the increase of a possibility of an accident or a new or different type of accident is reduced..." by the proposed

change. The proposed change does not affect the functions specified in Section 6 for safety reviews and audits conducted at the site as the Plant Operations Review Committee, Nuclear Safety Review Board, Radiological Assessment Review Committee and Technical Review and Control. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Acting Assistant Director: Rajender Auluck

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: June 13, 1988 (TS 88-04)

Description of amendment requests: The Tennessee Valley Authority (TVA) proposes to change the Sequoyah (SQN) Units 1 and 2 Technical Specifications (TS). The changes are to revise the Action Statements for the Limiting Condition for Operation (LCO) 3.8.1.1 to extend the timeframe for performing diesel generator surveillance in Surveillance Requirement (SR) 4.8.1.1.2.a.4.

LCO 3.8.1.1 requires a minimum of two alternating current (ac) electrical offsite power sources and four onsite ac power sources (diesel generator sets). In the event ac power sources are lost, compliance with one of four Actions Statements is required depending on the number of sources lost. Each Action requires performance of surveillances to demonstrate the operability of the remaining ac power sources. LCO 3.8.1.1 requires that SR 4.8.1.1.2.a.4 be performed within one hour and at least once every eight hours thereafter. SR 4.8.1.1.2.a.4 demonstrates operability of each diesel generator by verifying that the diesel starts from ambient condition and accelerates to at least 900 revolutions per minute (r/min) in less than or equal to ten seconds. In lieu of the current timeframe for performance of SR 4.8.1.1.2.a.4, the proposed change would extend the timeframe for the following three cases. For the first case whether either an offsite circuit or a diesel generator set is inoperable (Action a), SR 4.8.1.1.2.a.4 would be extended to 24 hours. For the second case where one offsite circuit and one diesel generator set are inoperable (Action b), SR 4.8.1.1.2.a.4 would be extended to eight hours. For the third case where two offsite circuits are inoperable (Action c), SR 4.8.1.1.2.a.4 would be extended to eight hours.

Basis for proposed no significant hazards consideration determination: In its submittal, TVA stated the following:

As part of the resolution to Unresolved Safety Issue A-44, "Station Blackout," NRC staff issued GL 84-15, "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability." One of the items contained in the GL was directed toward reducing the number of cold, fast-start surveillance tests for diesel generators. The GL provided an example of a modified standard technical specification that would reduce the number of fast starts on the diesel generators. The proposed change to SQN's technical specification is consistent with the modified technical specification provided in GL 84-15 and is also consistent with NUMARC Station Blackout Initiative 3 that recommended that utilities reduce, as much as possible, cold starting of emergency diesel generators during test conditions.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

TVA has evaluated the proposed technical specification change and determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated. The purpose of the proposed change is to reduce the number of cold, fast-start surveillance tests from ambient conditions for SQN's diesel generators. The goal is not to totally eliminate the cold, fast-start surveillance test because the design basis for the plant (i.e., large loss of coolant accident coincident with a loss of offsite power) requires this capability. The goal is to reduce the undue wear and stress on the diesel engine parts caused by frequent cold, fast starts. This is accomplished by extending the timeframe for performing diesel generator surveillance testing. Under SQN's current action requirement, if onsite/offsite ac power sources are determined to be inoperable, the intact diesel generators must be verified to be operable by starting the diesels from ambient conditions (cold, fast starts). This must be performed within 1-hour and at least once every 8-hours thereafter. In lieu of this short timeframe, the proposed change would delay the diesel generator start requirement for up to 24-hours (8-hours if two ac power sources are inoperable). This delay in testing is offset by SQN's diesel generator reliability program as contained in Table 4.8-1 of SQN's technical specifications. Based on NRC staff's technical judgement and the concerns expressed by Nuclear Management and Resources Council and other nuclear power industry groups (Institute of Nuclear Power Operations and American Nuclear Insurers), the reduction in the number of cold, fast starts results in an overall improvement in diesel engine reliability and availability of SQN's diesel engines. By improving the reliability and availability of SQN's diesel engines, the probability or consequences of an accident previously evaluated may be decreased.

(2) create the possibility of a new or different kind of accident from any previously analyzed. No new accident scenarios are created by this change because this change only affects the time interval for performing diesel generator surveillance testing when offsite/onsite power sources are determined to be inoperable and does not alter the diesel generator design parameters, the plant equipment, or the facility. Under SQN's current action requirement, if offsite/onsite ac power sources are determined to be inoperable, the intact diesel generators must be verified to be operable by starting the diesel generators within one hour and at least once every eight hours thereafter. Under the proposed change, the start requirement would be required within 24-hours (8-hours if two offsite/onsite power sources are inoperable). This reduces the number of required cold, fast starts and results in an overall improvement in diesel engine reliability and availability. Because the proposed change does not physically affect the diesel equipment or the onsite/offsite ac electrical power sources, there is no possibility for creating a new or different kind of accident from any previously analyzed.

(3) involve a significant reduction in a margin of safety. The proposed change will accomplish a reduction in the number of cold, fast-start surveillance tests for SQN's diesel generators. This is accomplished by delaying the diesel generator start test for up to 24-hours when an (offsite/onsite) ac power source is found to be inoperable (8-hours if two ac power sources are inoperable). Under the current requirement, diesel generator start tests are required on the intact diesel generators within 1-hour and at least once every eight hours thereafter until the inoperable ac power sources are restored. Lengthening this surveillance time requirement will allow the Operations staff sufficient time to prewarm the operable diesel engines before starting and thereby reduce the number of diesel generator cold, fast starts. Additionally, the Operations staff would have more time to focus on returning the inoperable ac power source to service rather than directing attention toward prompt diesel generator surveillance testing. The proposed change improves diesel engine

reliability and availability by reducing the number of cold, fast starts, i.e., subjects and the diesel engines to less mechanical stress and wear and creates a safer operational environment by reducing the surveillance test burden on the Operations staff. This results in an overall increase in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Because accidents previously evaluated were not initiated by the failure of a diesel generator, the proposed change does not involve a significant increase in the probability of an accident previously evaluated. Because the proposed change does not affect the diesel generator performance parameter or any other plant equipment and would act to improve the diesel generator reliability and availability, the proposed change will not significantly increase the consequences of an accident previously evaluated. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Acting Assistant Director: Rajender Auluck

Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of amendment requests: May 26, 1988 (TS 88-02)

Description of amendment requests: The Tennessee Valley Authority (TVA) proposes to modify the Sequoyah Nuclear Plant (SQN) Unit 2 Technical Specification (TS) Surveillance Requirement (SR) 4.7.1.2.a to add pump-specific differential pressure test values for each auxiliary feedwater (AFW) pump. The associated bases section is proposed to be revised to clarify the AFW TS requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

Operation of SQN in accordance with the proposed amendment will not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated. As described in Section 10.4.7.2 of the SQN [Final Safety Analysis Report], FSAR, the AFW system is an engineered safety features system designed, constructed, and operated to serve as a backup to the main feedwater system to provide feedwater to the steam generator in the event that main feedwater is not available. This maintains the heat sink capabilities of the steam generators. The AFW system is directly relied upon to prevent core damage and system overpressurization in the event of transients, such as a loss of normal feedwater or a secondary system pipe rupture, and to provide a means for plant cooldown following any plant transient.

The proposed change to SR 4.7.1.2.a adds pump-specific, differential pressure test values for each AFW pump. The new test values ensure that each AFW pump will provide a flow of at least 400 gal/min plus pump recirculation flow. This flow satisfies the FSAR assumptions concerning 440 gal/min AFW flow to two intact steam generators. The addition of pump-specific test values merely reflects the performance characteristics of different pumps. Because the revised SR ensures conformance with the FSAR accident analysis assumptions, the probability or consequences of an accident previously evaluated remain unchanged.

(2) create the possibility of a new or different kind of accident from any previously analyzed. As described above, the proposed technical specification change to SR 4.7.1.2.a adds pump-specific, differential pressure requirements for the testing of the AFW system. The revised requirements ensure that the AFW pumps will satisfy the assumptions of the FSAR AFW analyses. No changes, other than those to the testing values, are made to the AFW system. As such, the possibility of a new or different kind of accident from any previously analyzed is not created by this change.

(3) involve a significant reduction in a margin of safety. The proposed changes to SR 4.7.1.2.a add pump-specific, differential pressure test values for each AFW pump. The new test values ensure that each AFW pump will provide a flow of at least 440 gal/min plus recirculation flow. This flow ensures that plant operation is bounded by the FSAR analyses assumptions that 440 gal min AFW flow is available to the steam generators. Because operation remains bounded by the FSAR analyses, there is no reduction in the margin of safety.

TVA has evaluated the proposed technical specification change and determines that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Acting Assistant Director: Rajender Auluck

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: May 25, 1988

Description of amendment requests: The proposed amendments would revise Table 6.1-1, "Minimum Shift Crew Composition" of the Technical Specifications for Surry Units 1 and 2, to increase the minimum shift manning requirements for Auxiliary Operators (AO) from three to four. This increased manning stipulation would be made in order to comply with the requirements of 10 CFR Part 50, Appendix R.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed change in accordance with the requirements of 10 CFR 50.92 and has determined that the request does not involve significant hazards considerations. The licensee's analysis is provided below.

The proposed change does not involve a significant hazards consideration, because operation of Surry Units 1 and 2 in accordance with the proposed amendment[s] would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. Increasing the [a]uxiliary [o]perator manning requirement will not alter plant design or system operation. The proposed change would assure that the minimum number of operating personnel necessary to safely shutdown and maintain the unit in the event of a fire is

available onsite. Therefore, this change cannot increase the probability or consequences of an accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. Since this proposal increases a previously specified manning requirement and further will not alter plant design or system operation, the possibility of a new or different kind of accident is not created by this change.

(3) Involve a significant reduction in a margin of safety. As noted above, the proposed change constitutes an additional limitation not presently included in the technical specifications by increasing the auxiliary operator manning requirement. In so doing, the margin of safety will be maintained with respect to Fire Protection.

Therefore, pursuant to 10 CFR 50.92, it has been determined that this change does not involve a significant hazards consideration.

After a preliminary review of the licensee's analysis, the staff agrees with the licensee's conclusions as stated above. Therefore, the staff proposes to determine that the proposed amendments do not involve significant hazards considerations.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: April 28, 1988

Brief description of amendments: The proposed amendment would revise the Technical Specifications as suggested by Generic Letter 88-06, "Removal of Organizational Charts from Technical Specification Administrative Control Requirements."

Date of publication of individual notice in **Federal Register** June 6, 1988 (53 FR 20700)

Expiration date of individual notice: July 6, 1988

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36030.

Cleveland Electric Illuminating Company, et al., Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: April 4, 1983

Brief description of amendment: The amendment would modify the Technical Specifications to clarify definition of Reportable Event, making it consistent with the requirements of Generic Letter 83-43 dated December 19, 1983.

Another proposed change is a deletion of the organizational charts (Figures 6.2.2-1), and the addition of statements in Section 6.2.1 to compensate for the organization chart deletions. These changes were submitted in response to guidance contained in Generic Letter 88-06 dated March 22, 1988. As such, these changes to delete organization charts are considered administrative.

An additional proposed change to the TS is to delete the exception to TS Section 6.3.1 for the Senior Operations Coordinator as this exception is no longer required.

The proposed amendment would also modify TS 6.5.1.2, 6.5.1.3, and 6.5.1.5 to reduce the size and change the membership requirements for the Plant Operations Review Committee (PORC). The definition of Quorum in TS 6.5.1.5 would also be changed to reflect the above changes. The proposed amendment would further modify TS 6.5.1.6.i and n and 6.5.3.1.f, deleting the requirement for the PORC to submit recommended changes to the Nuclear Safety Review Committee based upon PORC reviews of the Security Plan, Security Contingency Instructions, Emergency Plan and implementing instructions, and Fire Protection Program and implementing procedures.

The proposed amendment would also move the requirements for temporary procedure changes from TS 6.5.3.1.a to a new section 6.8.3. The old section 6.8.3 has been renumbered to 6.8.4.

The proposed amendment would also delete various nonapplicable footnotes, correct typographical errors, reflect organization title changes and clarify which system are included in the leakage reduction program for primary coolant sources outside containment.

Date of individual notice in **Federal Register:** May 31, 1988 (53 FR 19832).

Expiration date of individual notice: June 30, 1988.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: May 6, 1988

Brief description of amendments: The proposed amendments would revise the Technical Specifications as suggested by Generic Letter 88-06, "Removal of Organizational Charts from Technical Specification Administrative Control Requirements."

Date of publication of individual notice in **Federal Register:** June 3, 1988 (53 FR 20397)

Expiration date of individual notice: July 5, 1988

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of amendment request: May 6, 1988

Brief description of amendment: The proposed amendment would revise the Technical Specifications as suggested by Generic Letter 88-06, "Removal of Organizational Charts from Technical Specification Administrative Control Requirements."

Date of publication of individual notice in **Federal Register:** June 3, 1988 (53 FR 20398)

Expiration date of individual notice: July 5, 1988

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: May 20, 1988

Brief description of amendments: The amendments revise the technical specifications relating to Section 6.0, Administrative Controls, by removing the organization charts and changing the titles of certain management personnel.

Date of publication of individual notice in **Federal Register:** June 2, 1988 (53 FR 20199)

Expiration date of individual notice: July 1, 1988

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Dates of application for amendment: November 26, 1986 and October 21, 1987

Brief description of amendment: This amendment modifies License Condition Section 3.F to conform to the requirements of 10 CFR 73.55.

Date of issuance: June 6, 1988

Effective date: June 6, 1988

Amendment No.: 118

Facility Operating License No. DPR-23. The amendment revised the License.

Date of initial notice in **Federal Register:** May 4, 1988 (53 FR 15906)

The Commission's related evaluation of the amendment is contained in a letter to the licensee, and a Safeguards Evaluation Report, dated June 6, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Units 1 and 2, Ogle County, Illinois

Date of application for amendments: November 26, 1986 and January 14, 1988

Brief description of amendments: These amendments modified paragraph 2.E of the License No. NPF-37 and paragraph 2.F of License No. NPF-66 to require compliance with the revised Physical Security Plan. This plan was updated to conform to the latest requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: June 7, 1988

Effective date: June 7, 1988

Amendment Nos.: 18 and 18

Facility Operating License Nos. NPF-37 and NPF-66. These amendments revised the license.

Date of initial notice in **Federal Register:** May 4, 1988 (53 FR 15918)

The Commission's related evaluation of the amendments is contained in a letter to Commonwealth Edison Company dated June 7, 1988 and a Safeguards Evaluation Report dated June 7, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: November 26, 1986 and January 14, 1988

Brief description of amendments: These amendments modified paragraph 3.E of the license to require compliance with the revised Physical Security Plan. This plan was updated to conform to the latest requirements of 10 CFR 73.55.

Date of issuance: June 9, 1988

Effective date: June 9, 1988

Amendment Nos.: 108 and 103

Facility Operating License Nos. DPR-29 and DPR-30. These amendments revised the license.

Date of initial notice in **Federal Register:** May 4, 1988 (53 FR 15918). The Commission's related evaluation of the amendments is contained in a letter to Commonwealth Edison Company dated June 9, 1988 and a Safeguards Evaluation Report dated June 9, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Commonwealth Edison Company, Docket No. 50-265, Quad Cities Nuclear Power Station, Unit 2, Rock Island County, Illinois

Date of application for amendment: March 28, 1988

Brief description of amendment: This amendment revised operating/safety limits and expanded the operating domain to provide for Cycle 10 operation subsequent to the ninth core reload.

Date of issuance: June 17, 1988

Effective date: June 17, 1988

Amendment No.: 104

Facility Operating License No. DPR-30. Amendment revised the License and Technical Specifications.

Date of initial notice in Federal Register: May 4, 1988 (53 FR 15907). The

Commission's evaluation of these amendments is contained in a Safety Evaluation dated June 17, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: June 5, 1987, as supplemented May 19, 1988

Brief description of amendments: The amendments modified the Technical Specifications (TS) by excluding the snubber listings from TS 3/4.7.8 and its Bases.

Date of issuance: June 6, 1988

Effective date: June 6, 1988

Amendment Nos.: 86 and 67

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 4, 1988 (53 FR 15910)

The licensee's May 19, 1988 submittal provided additional clarification and did not affect the substance of the amendment request or the proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 6, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Duke Power Company, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application for amendments: August 11, 1987

Brief description of amendments: The amendments revise the Station's common Technical Specifications to change fire hose stations and make editorial corrections.

Date of Issuance: June 7, 1988

Effective date: June 7, 1988

Amendment Nos.: 166, 166, and 163

Facility Operating Licenses Nos. DPR-38, DPR-47, and DPR-55. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 6, 1988 (53 FR 11370) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 7, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of application for amendments: January 21, 1986, as revised March 3, 1987

Brief description of amendments: The amendments revised the Technical Specifications related to the transfer of radioactive effluents to the chemical treatment pond.

Date of issuance: June 15, 1988

Effective date: June 15, 1988

Amendment Nos.: 167, 167, and 164

Facility Operating License Nos. DPR-38, DPR-47 and DPR-55. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 2, 1986 (51 FR 24253) and May 4, 1988 (53 FR 15911)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 15, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of application for amendment: February 11, 1988

Brief description of amendment: The amendment revises the steam generator water level low-low reactor trip setpoint and auxiliary feedwater actuation setpoint by lowering them from 15.5% to 11.5%.

Date of issuance: June 10, 1988

Effective date: June 10, 1988

Amendment No.: 3

Facility Operating License No. NPF-73. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 23, 1988 (53 FR 9501). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 10, 1988

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application of amendment: January 22, 1988, as supplemented April 6, 1988.

Brief description of amendment: The amendment changed the requirements of the boric acid makeup system such that the boric acid concentration was lowered, the water volume was increased, and heat tracing of the circuits is no longer required.

Date of Issuance: June 6, 1988

Effective Date: June 6, 1988

Amendment No.: 94

Facility Operating License No. DPR-67: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 9, 1988 (53 FR 7591)

Additional information was submitted by letter dated April 6, 1988. The additional information did not alter the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 6, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application of amendment: March 17, 1987

Brief description of amendment: The amendment authorized the installation of additional containment isolation valves in the station air system and changed the valve tag numbers associated with the station air supply header through containment (TS Tables 3.6-1 and 3.6-2).

Date of Issuance: June 13, 1988

Effective Date: June 13, 1988

Amendment No.: 95

Facility Operating License No. DPR-67: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 17, 1987 (52 FR 23098). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 13, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application of amendment: August 25, 1987

Brief description of amendment: The amendment revised several valve tag numbers, penetration numbers, and valve types in the St. Lucie Unit 1 Technical Specification Table 3.6-1, "Containment Leakage Path" and Table 3.6-2, "Containment Isolation Valves."

Date of Issuance: June 16, 1988

Effective Date: June 16, 1988

Amendment No.: 96

Facility Operating License No. DPR-67: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 7, 1987 (52 FR 37545). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application of amendment: November 27, 1987, as supplemented May 4 and 20, 1988 (partial response).

Brief description of amendment: This amendment revised the pressure/temperature limits, defines a new reactor coolant system cold leg temperature range for low temperature overpressure protection (LTOP), and established the minimum cold leg temperature for power operated relief valve use for LTOP.

Date of Issuance: June 14, 1988

Effective Date: June 14, 1988

Amendment No.: 31

Facility Operating License No. NPF-16: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (53 FR 3954 dated February 10, 1988, and 53 FR 19357 dated May 27, 1988). These notices provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice published May 27, 1988 also provided for an opportunity to request a hearing by June 27, 1988, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 14, 1988.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of application for amendment: February 9, 1988

Brief description of amendment: The amendment revised the Technical Specifications to explain that the Reactor Water Cleanup System high differential flow isolation signal includes a 45-second time delay.

Date of issuance: June 9, 1988

Effective date: June 9, 1988

Amendment No.: 93

Facility Operating License No. NPF-5. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 4, 1988 (53 FR 15911)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 9, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of application for amendment: February 4, 1988

Brief description of amendment: The amendment modified the Technical Specifications to allow a surveillance flow rate of 150 gpm for each motor-driven auxiliary feedwater pump.

Date of issuance: June 10, 1988

Effective date: June 10, 1988

Amendment No.: 5

Facility Operating License No. NPF-68: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 23, 1988 (53 FR 9506)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 10, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: June 5, 1987 as modified May 13, 1988.

Brief description of amendment: This amendment increases the main steam line (MSL) tunnel north instrumentation setpoints and allowable temperature values for (1) MSL isolation, reactor core isolation cooling (RCIC) system isolation, and reactor water cleanup (RWCU) system isolation; and (2) MSL tunnel (cooler) high temperature differential temperature for MSL isolation and RCIC and RWCU isolation.

Date of issuance: June 3, 1988

Effective date: June 3, 1988

Amendment No.: 24

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications and/or License.

Date of initial notice in **Federal Register:** July 29, 1987 (52 FR 28378). The May 13, 1988 letter withdrew a portion of the amendment request and did not change the finding of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 3, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: July 22, 1987

Brief description of amendments: The amendments change the Technical Specification for functional tests of snubbers by allowing an extension in test frequency from 18 to 24 months with a corresponding increase in the test sample from 10 to 14% of the snubbers. The amendments also correct an editorial oversight on visual inspections to include percent signs on the frequency span.

Date of issuance: June 15, 1988

Effective date: June 15, 1988

Amendments Nos.: 116, 102

Facility Operating Licenses Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 23, 1987 (52 FR 35794). The Commission's related evaluation of the amendments is

contained in a Safety Evaluation dated June 15, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: December 8, 1986, as supplemented August 7, 1987

Brief description of amendments: The amendments revise the Technical Specifications by replacing the liquid radwaste effluent line monitor designated as R-18 with a new monitor designated as RRS-1001. The amendments also add periodic Channel Functional Tests as a surveillance requirement and a footnote to allow R-18 to meet the Technical Specification requirements until the new monitor, RRS-1001, is operable.

Date of issuance: June 15, 1988

Effective date: June 15, 1988

Amendments Nos.: 117, 103

Facility Operating Licenses Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 7, 1987 (52 FR 37546). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 15, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: February 2, 1988

Brief description of amendment: The amendment revised the Technical Specifications to revise instrument identification numbers and depict extended reactor vessel water level instrument range.

Date of issuance: June 13, 1988

Effective date: June 13, 1988

Amendment No.: 121

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7594)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 13, 1988.

No siginificant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 25, 1988

Brief description of amendment: The amendment changed the Technical Specifications applicable to the 125 VDC Station Batteries.

Date of issuance: June 16, 1988

Effective date: June 16, 1988

Amendment No.: 122

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 4, 1988 (53 FR 15913)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 1988.

No siginificant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: April 5, 1988, as supplemented April 8, 1988

Brief description of amendment: This amendment adds new Technical Specifications 3.7.1 and 4.7.1, "Special Test Exception-Shutdown Margin Demonstrations" and associated Bases to allow shutdown margin testing in the Shutdown Condition-Cold and revises Technical Specification Definitions 1.1a, "Shutdown Condition-Cold" and 1.1b, "Shutdown Condition-Hot." These changes permit reactor coolant system pressure testing (system leakage and hydrostatic testing) and control rod scram time testing to be performed with the mode switch in the refuel position and the reactor coolant temperature greater than 212° F. These changes also allow the mode switch to be placed in the refuel position during scram recovery operations.

Date of issuance: June 9, 1988

Effective date: June 9, 1988

Amendment No.: 99

Facility Operating License No. DPR-63: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (53 FR 12622 dated April 15, 1988). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by May 16, 1988, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The Commission's related evaluation is contained in a Safety Evaluation dated June 9, 1988.

Attorney for licensee: Mr. Troy B. Conner, Jr., Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: October 1, 1981 as supplemented and amended on November 15, 1984, November 24, 1986, September 2 and November 18, 1987, and March 30, 1988.

Brief description of amendments: These amendments revised the Technical Specifications relating to diesel generator fuel oil in response to the guidance of Regulatory Guide 1.137 "Fuel Oil Systems for Standby Diesel Generators." Accordingly, the Technical Specifications are revised to identify the quality criteria for fuel oil properties (e.g., specific or API gravity, Viscosity, Water and sediment), the sampling and testing requirements to assure the quality, and the required actions when the fuel oil does not meet the quality criteria.

Date of issuance: May 31, 1988

Effective date: Six months from the date of issuance to accommodate revisions to plant procedures and test equipment requirements.

Amendments Nos.: 131 and 134

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 10, 1988 (53 FR 3957)

The licensee's March 30, 1988 submittal provided additional clarification but did not change the substance of the amendment request.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 31, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Power Authority of the State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: December 1, 1986 and December 14, 1987.

Brief description of amendment: This amendment modifies paragraph 2.G of the license to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: June 6, 1988

Effective date: June 6, 1988

Amendment No.: 81

Facility Operating License No. DPR-64: Amendment revised the License.

Date of initial notice in **Federal Register:** May 4, 1988 (53 FR 15915). The Commission's related evaluation of the amendment is contained in a letter to the Power Authority of the State of New York dated June 6, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: December 22, 1987

Brief description of amendment: The amendment changes the Technical Specifications to raise the temperature limit of the service water pump/screen room from 102 degrees Farenheit to 118 degrees Farenheit.

Date of issuance: June 6, 1988

Effective date: June 6, 1988

Amendment No.: 71

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** February 24, 1988 (53 FR 5497)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 6, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: February 10, 1988

Brief description of amendment: The amendment changes the Technical Specifications to establish clear and independent access to senior management regarding matters of nuclear safety by a change in the oversight of the Nuclear Safety Review Committee.

Date of issuance: June 13, 1988

Effective date: June 13, 1988

Amendment No.: 72

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 23, 1988 (53 FR 9515)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 13, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: April 28, 1987

Brief description of amendment: The amendment requires all three reactor coolant pumps to be in operation when the reactor trip breakers are closed in Mode 3 (hot standby).

Date of issuance: May 19, 1988

Effective date: This license amendment is effective the date of issuance and must be fully implemented no later than 30 days from date of issuance.

Amendment No.: 102

Provisional Operating License No. DPR-13. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 6, 1988 (53 FR 11376)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1988.

No significant hazards consideration comments received: No comments.

Local Public Document Room location: General Library, University of California, Post Office Box 19557, Irvine, California 92713.

United States Department of Commerce, National Bureau of Standards (NBS), Docket No. 50-184, NBS Test Reactor

Date of application for amendment: June 22, 1987

Brief description of amendment: This amendment revises the Technical Specifications to require that the new guide tube isolation valves be either operable or closed as are other isolation valves in ventilation and process piping penetrations.

Date of issuance: June 10, 1988

Effective Date: June 10, 1988

Amendment No.: 6

Facility Operating License No. TR-5: This amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** (52 FR 32212) August 26, 1987

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 10, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room: N/A

Washington Public Power Supply System, Docket No. 50-397 Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: March 7, 1988, as supplemented April 12, 1988.

Brief description of amendment: The amendment revises Technical Specification Table 3.2.3-1 "MCPR Operating Limits," and Figure 3.3.10-1, "Thermal Power Limits of Specification 3.3.10-1," to provide operating limits for the fourth fuel cycle of operation. Also included are other miscellaneous Technical Specification changes which were previously approved by the staff and were the subject of previous notices but which inadvertently were not issued.

Date of issuance: June 9, 1988

Effective date: June 9, 1988

Amendment No.: 59

Facilities Operating License No. NPF-21: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 4, 1988 (53 FR 15920). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 9, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: November 11, 1986 and January 6 and March 23, 1988

Brief description of amendments: The amendments modified paragraph 3.F of the licenses to require compliance with the amended Physical Security Plan. This plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of these amendments.

Date of issuance: June 9, 1988. June 9, 1988

Effective date: June 9, 1988

Amendment Nos.: 115 and 118.

Facility Operating License Nos. DPR-24 and DPR-27. These amendments revised the license.

Date of initial notice in **Federal Register:** May 4, 1988 (53 FR 15921)

The Commission's related evaluation of the amendments is contained in a letter dated June 9, 1988 and Safeguards Evaluation Report dated June 9, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: December 2, 1986, and March 22, 1988

Brief description of amendment: This amendment modified paragraph 2.C.4 of the license to require compliance with the amended Physical Security Plan. This plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: June 9, 1988

Effective date: June 9, 1988

Amendment No.: 79

Facility Operating License No. NPF-30. This amendment revised the license.

Date of initial notice in **Federal Register:** May 4, 1988 (53 FR 15921) The Commission's related evaluation of the amendment is contained in a letter dated June 9, 1988 and a Safeguards Evaluation Report dated June 9, 1988. No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Wolf Creek Nuclear Operating Corporation, Kansas Gas and Electric Company, Kansas City Power & Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: February 26, 1988

Brief description of amendment: The amendment revised Technical Specifications 5.3.1 and 5.6.1.1 to allow storage of fuel assemblies of up to 4.5 weight percent U-235 which is an increase from the current limit of 3.5 weight percent U-235. Technical Specification 5.6.1.1 is also being revised to reflect the actual spent fuel pool storage rack nominal cell pitch of 9.236 inches. In addition, the Acceptable/Unacceptable regions of Figure 5.6-1 and Figure 3.9-1 are being changed on the Burnup versus Enrichment graphs to reflect the higher possible enrichments.

Date of Issuance: June 17, 1988

Effective date: June 17, 1988

Amendment No.: 16

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (53 FR 20197 dated June 2, 1988). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by *June 16, 1988,* but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 17, 1988.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: September 15, 1987 as supplemented on December 2, 1987

Brief description of amendment: The amendment extends the expiration date of the license from November 4, 1987 to July 9, 2000, an extension of two years and eight months.

Date of issuance: June 9, 1988

Effective date: Date of Issuance

Amendment No.: 108

Facility Operating License No. DPR-3: Amendment revised a license condition.

Date of Initial Notice in **Federal Register:** October 21, 1987 (52 FR 39311)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 9, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: March 25, 1988

Brief description of amendment: The amendment deletes references to mode 5 (cold shutdown) in Technical Specification Tables 3.3-2 and 4.3-2.

Date of issuance: June 13, 1988

Effective date: June 13, 1988

Amendment No.: 109

Facility Operating License No. DPR-3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 20, 1988 (53 FR 13028). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 13, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: December 23, 1987

Brief description of amendment: The amendment revises the Technical Specifications (TS) related to control rod position indication and corrects a minor error in the TS.

Date of issuance: June 17, 1988
Effective date: June 17, 1988
Amendment No.: 110
Facility Operating License No. DPR-3: Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: March 17, 1988 (53FR8827)
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 17, 1988
No significant hazards consideration comments received: No. The proposed amendment was noticed with an opportunity for prior hearing.
Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By July 29, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for

each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Commonwealth Edison Company Docket No. 50-456 and 50-457, Braidwood Station, Units 1 and 2, Will County, Illinois

Date of amendment request: June 2, 1988

Brief description of amendment: This emergency amendment to the Technical Specifications is a one-time only change to Technical Specification 4.3.1.1 for the Reactor Trip System Instrumentation. This change extends the monthly surveillance interval from 31 days (monthly) to 41 days for the Power Range Neutron Flux High Setpoint for an additional ten (10) days for Unit 1 only.

Date of issuance: June 10, 1988

Effective date: June 2, 1988

Amendment No.: 9

Facility Operating License No. NPF-72 and NPF-77. Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, final determination of no significant hazards consideration are contained in a Safety Evaluation dated June 10, 1988.

Attorney for licensee: Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

Local Public Document Room location: Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 31, 1988 as supplemented June 1, 1988.

Brief description of amendment: The amendment revised the Technical Specifications by reducing from two to one the number of Containment Cooling Fans required to be operable in each train of the Containment Cooling System.

Date of issuance: June 2, 1988

Effective date: June 2, 1988

Amendment No.: 39

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, consultation with State of Louisiana, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated June 2, 1988.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Dated at Rockville, Maryland, this 29th day of June, 1988.

For the Nuclear Regulatory Commission

Gary M. Holahan,

Assistant Director, Division of Reactor Projects-III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88-14526 Filed 6-28-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on July 14–16, 1988, in Room 1046, 1717 H Street NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on June 14, 1988.

Thursday, July 14, 1988

8:30 a.m.–8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest.

8:45 a.m.–10:45 a.m.: Policy on Severe Accidents (Open)—ACRS review and comment regarding proposed NRC integrated program for closure of severe accident issues.

11:00 a.m.–11:45 a.m.: Working Hours for Nuclear Plant Operators (Open)—Review and comment on proposed NRC policy regarding working hours for nuclear power plant operators.

11:45 a.m.–12:15 p.m.: Topics for Meeting with NRC Commissioners (Open)—Discuss comments and recommendations in ACRS report of May 10, 1988 regarding Individual Plant Examinations and the proposed Integrated Safety Assessment Program II (ISAP II).

2:00 p.m.–3:30 p.m.: Meeting with NRC Commissioners (Open) (Commissioners Conference Room, 1st Floor, One White Flint North Building, 11555 Rockville Pike, Rockville, MD.)—Discuss comments and recommendations in ACRS report of May 10, 1988 regarding Individual Plant Examinations and the proposed ISAP II.

4:30 p.m.–6:30 p.m.: ECCS Evaluation Models (Open/Closed)—ACRS review and comment regarding proposed revision of Westinghouse ECCS evaluation models for two-loop plants with upper-plenum injection.

Portions of this session will be closed as required to discuss Proprietary Information applicable to the models being proposed.

Friday, July 15, 1988

8:30 a.m.–10:00 a.m.: Equipment Qualification-Risk Scoping Study (Open)—ACRS review and comment regarding equipment qualification risk-scoping study.

10:15 a.m.–12:15 p.m.: Modular High Temperature Gas Cooled Reactor (Open)—ACRS review and comment regarding proposed DOE standardized MHTGR.

1:15 p.m.–2:45 p.m.: Nuclear Power Plant Operating Experience (Open) Briefing by representatives of AEOD regarding systematic evaluation of nuclear power plant operating experience.

2:45 p.m.–3:15 p.m.: Pilgrim Nuclear Station (Open)—Briefing and discussion regarding ACRS review of activities related to the restart of the Pilgrim Nuclear Station.

3:30 p.m.–4:00 p.m.: Future ACRS Activities (Open)—Discuss anticipated Subcommittee activities and topics proposed for consideration by the full Committee.

4:00 p.m.–6:00 p.m.: Advanced Reactors (Open)—ACRS comments regarding proposed regulatory requirements for key features of standardized DOE proposed advanced gas cooled and liquid-metal cooled reactors.

Saturday, July 16, 1988

8:30 a.m.–12:30 p.m.: Preparation of ACRS Reports (Open/Closed)—Discuss ACRS reports to the NRC regarding issues considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matter being discussed.

1:30 p.m.–3:00 p.m.: ACRS Practices and Procedures (Open/Closed)—Discuss proposed changes in ACRS procedures and practices such as reorganization of ACRS generic subcommittees, participation by members in meetings which are not sponsored by the ACRS, and procedures for review of operating events and incidents. Qualifications of candidates proposed for appointment to the Committee will also be discussed.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 1987 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being keep, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meetimg as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)) and Proprietary Information applicable to the facility being discussed (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m.

Date: June 24, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–14637 Filed 6–28–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–320]

Meeting of the Advisory Panel for the Decontamination of Three Mile Island, Unit 2 GPU Nuclear Corp.

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island, Unit 2 (TMI–2) will be meeting on July 14, 1988, from 7:00 p.m. to 10:00 p.m. at the Holiday Inn, 23 S. Second Street, Harrisburg, PA. The meeting will be open to the public.

At this meeting, the Panel will receive a status report on the progress of defueling from the licensee, GPU Nuclear Corporation.

The Panel will also conduct a working session to review the recently issued draft supplement to the Programmatic Environmental Impact Statement (NUREG–0683, Supplement 3) dealing with the licensee's plans for post-defueling monitored storage and subsequent cleanup of TMI–2. Members of the public will be given the opportunity to address the Panel.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–1373.

Dated June 23, 1988.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–14638 Filed 6–28–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–440 and 50–441]

Cleveland Electric Illuminating Co., et al., Perry Nuclear Power Plant, Unit Nos. 1 and 2; Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a Petition dated January 22, 1988, filed by Susan L. Hiatt on behalf of Ohio Citizens for Responsible Energy, Inc. (Petitioner). The Petitioner requested that the Nuclear Regulatory Commission (NRC) grant a variety of relief, including suspension of the operating license for the Perry Nuclear Power Plant, Unit 1, and suspension of the construction permit for the Perry Nuclear Power Plant, Unit 2. The Petition alleged various seismic inadequacies in the Perry Nuclear Power Plant design, specifically:

1. The earthquake of January 31, 1986, at Chardon, Ohio and the historic seismicity near the Perry Nuclear Power Plant can be associated with a tectonic structure (fault) that has been revealed by magnetic data.

2. This tectonic structure is capable of an earthquake with a magnitude of 6.5 or greater.

3. The present safe-shutdown earthquake (magnitude of 5.3 ± 0.5) for the Perry facility does not provide the margin of safety required.

On the basis of these alleged inadequacies, Petitioner claimed that the Perry facility did not comply with the Commission's requirements related to seismic design.

On March 2, 1988, the Director of the Office of Nuclear Reactor Regulation acknowledged receipt of the Petition and notified the Petitioner that this matter would be considered pursuant to 10 CFR 2.206.

The Director has determined that the Petitioner's request should be denied. The reasons for the denial are set forth in the "Director's Decision Pursuant to 10 CFR 2.206" (DD–88–10), which is available for inspection and copying in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the local public document room for the Perry Nuclear Power Plant at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

A copy of the decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the decision will become the final action of the Commission 25 days after issuance unless the Commission on its own motion institutes review of the decision within that time.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland this 22nd day of June 1988.

[FR Doc. 88–14603 Filed 6–28–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–003 and 50–247]

Consolidated Edison Company of New York, Inc.; Consideration of Issuance of Amendments to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–5 and DPR–26, issued to Consolidated Edison Company of New York, Inc. (the licensee), for operation of the Indian Point Nuclear Generating Unit Nos. 1 and 2 located in Westchester County, New York.

The amendments would make the following changes in accordance with the licensee's application for amendments dated June 15, 1988:

1. The amendment would delete Figures 3.1 and 3.2 for Unit No. 1 Technical Specifications and Figures 6.2.1 and 6.2.2 for Unit No. 2 Technical Specifications. The removal is submitted in accordance with Generic Letter 88–06, "Removal of Organization Charts from Technical Specifications Administrative Control Requirements", issued on March 22, 1988.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments requested involve no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee evaluated the proposed changes against the standards in 10 CFR 50.92 and has provided the following analysis:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The deletion of the organization charts from the Technical Specifications does not affect plant operation nor does it affect any previously performed accident analysis since no change in the corporate or facility organization is involved. The organization charts, to the same level of detail as currently exists in the Technical Specifications, are to be included in the Final Safety Analysis Report (FSAR) via the next annual update to that documents scheduled to be submitted to the Commission prior to June 30, 1988. Future annual updates to the FSAR will include any relevant changes to those organization charts. Therefore, this proposed change does not increase the probability or consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The deletion of the organization charts from the Technical Specifications is an administrative change in nature. No physical alterations of plant configuration or changes to setpoints, operating parameters, etc. are being proposed. The corporate or facility organizations are not being changed by reason of this application. The charts depicting these organizations are simply proposed to be deleted from the Technical Specifications and will be included in the updated FSAR. Therefore, this proposed change does not create the possibility of a new of different kind of accident.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The deletion of the organizational charts from the Technical Specifications involves no plant operating or configurational changes. The organization charts will be maintained in the annually updated FSAR. Any potential effect on the margin of safety due to future organization changes will be addressed via the safety evaluation process of 10 CFR 50.59. Therefore, this currently proposed change does not involve a significant reduction in a margin of safety.

Based upon the above, the NRC staff proposes to determine that the TS changes proposed for Indian Point 1 and 2 involve no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it received a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch.

By July 29, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the

petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If a final determination is that the amendments requested involve no significant hazards considerations, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of those amendments.

If the final determination is that the amendment requested involve significant hazards considerations, any hearing held would take place before the issuance of any amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Dataqram Identification Number 3737 and the following message addressed to Robert A. Capra: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and Brent L. Brandenburg, Esq., Consolidated Edison Company of New York, Inc., 4 Irving Place, New York, New York 10003, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2/714(d).

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington DC 20555, and at the Local Public Document Room, White Plains Public Library, White Plains, New York.

Dated at Rockville, Maryland, this 23rd day of June 1988.

For the Nuclear Regulatory Commission.

Marylee M. Slosson,

Project Manager, Project Directorate I–1, Division of Reactor Projects, I–II.

[FR Doc. 88–14604 Filed 6–28–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–389]

Denial of Amendment to Facility Operating License and Opportunity for Hearing; Florida Power and Light Co.

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Florida Power and Light Company (the licensee) for amendment to Facility Operating License No. NPF–16, issued to the licensee for operation of the St. Lucie Plant, Unit 2 (the facility) located in St. Lucie County, Florida.

The proposed amendment would have revised the Technical Specifications (TS) to change the action statement of TS Section 3.7.1.6 and Bases 3/4.7.1.6 to allow 72 hours to restore an inoperable open main feedwater isolation valve (MFIV) to operable. The current requirement for return to operability is 4 hours. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on January 27, 1988 (53 FR 2315).

The licensee's application for the amendment was dated December 22, 1987.

The proposed change is based on (1) the licensee's estimate that in the event of a Design Basis Event (DBE) during either 4 or 72 hours of operation with an inoperable, open MFIV, the likelihood of occurrence of the sequence of events required to result in a failure to terminate feed flow is low, and (2) the licensee's argument that an extension of the MFIV action time to 72 hours provides the same time to repair an inoperable MFIV as is allowed to repair other safeguards systems, such as an inoperable Emergency Core Cooling System (ECCS), Containment Core Spray System, Fan Coolers, Intake Cooling System, or Component Cooling

Water System. The staff does not accept either position as justification for the proposed change.

The licensee's estimate of low likelihood of occurrence is based on generic estimates of the MFIV fail open frequency and the main steam line break (MSLB) frequency. Due to the uncertainties incorporated in the estimate and its questionable applicability to the facility, the staff does not accept it as a basis for changing the action statement of TS Section 3.7.1.6. The staff considers comparison of the MFIV action statement with those of the above-mentioned safeguards systems inappropriate. Since it is the staff's view that, from a functional point of view, the MFIV action statement should be compared with those of the main steam isolation valves (MSIV) and the containment isolation valves, for which the action time is 4 hours, the staff does not accept the licensee's comparison. The staff will only consider plant-specific justifications for changing the action statement. For these reasons, the proposed changes to TS Section 3.7.1.6 and Bases 3/4.7.1.6 are denied.

The licensee was notified of the Commission's denial of this request by letter dated

By July 29, 1988, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC by the above date.

A copy of any petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street NW., Washington, DC 20023.

For further details with respect to this action, see (1) the application for amendment dated December 22, 1987, and (2) the Commission's letter to Florida Power and Light Company dated June 22, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this 22nd day of June 1988.

For the Nuclear Regulatory Commission.

E.G. Tourigny,

Project Manager, Project Manager, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-14605 Filed 6-28-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220]

Niagara Mohawk Power Corp.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Niagara Mohawk Power Corporation (the licensee) to withdraw its January 23, 1986 application, as superseded January 29, 1988, to amend the Nine Mile Point Nuclear Station Unit 1 (NMP-1) Technical Specifications. The proposed amendment would have revised Technical Specifications 3.2.6 and 4.2.6 for NMP-1 regarding Inservice Inspection and Testing. The Commission issued a Notice of Consideration of Issuance of the Amendment in the Federal Register on April 23, 1986 (50 FR 15403). By letter dated April 28, 1988, the licensee stated that the January 23, 1986 application for an amendment had been superseded by its January 29, 1988 application for an amendment of the same Technical Specifications. Consequently, the licensee requested, pursuant to 10 CFR 2.107, that the January 23, 1986 application for an amendment be withdrawn.

For further details with respect to this action, see (1) the applications for amendment dated January 23, 1986 and January 29, 1988 and (2) the licensee's letter of April 28, 1988 requesting the January 23, 1986 application for amendment be withdrawn. All of the above documents are available for public inspection at the Commission's Public Document Room 1717 H Street NW., Washington, DC, and at the Penfield Library, State University of New York, Oswego, NY 13126.

Dated at Rockville, Maryland, this 22nd day of June 1988.

For the Nuclear Regulatory Commission.

Robert A. Benedict,

Project Manager, Project Director I-1, Division of Reactor Projects, I/II.

[FR Doc. 88-14606 Filed 6-28-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co., the Cleveland Electric Illuminating Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity For Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensee), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 located in Ottawa County, Ohio.

The proposed amendment would revise the Davis-Besse, Unit No. 1, Appendix A Technical Specifications (TS's) to permit operation of the facility at 2772 MW(t) for Cycle 6. Specifically, the proposed amendment would modify the following TS sections:

2.0—Safety Limits and Limiting Safety System Settings
3/4.1—Reactivity Control Systems
3/4.2—Power Distribution Limits
3/4.3—Instrumentation
3/4.4—Reactor Coolant System
3/4.5—Emergency Core Cooling Systems
5.0—Design Features

In addition, TS Basis 3/4.1, Reactivity Control Systems, and 3/4.5, Emergency Core Cooling Systems, also would be modified.

The proposed amendment would support the loading of 64 fresh fuel assemblies (FA's) and 64 burnable poison rod assemblies (BPRA's), the shuffling of 16 FA's and control rod assemblies (CRA's), the reinsertion of one previously-used FA, and the replacement of eight "black" axial power shaping rods (APSR's) with "gray" APSR's. In addition, other technical specification changes proposed include a reduced physics testing program, the removal of the two regenerative neutron sources, revised quadrant power tilt limits, reduced borated water supply requirements, increased power level for comparison of the excore and incore detector offsets, and increased thermal power limit for three-pump operation.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and Commission's regulations.

By July 29, 1988 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who

wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

No later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri, 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Kenneth E. Perkins: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, and to Gerald Charnoff, Esq., Shaw, Pitman, Potts and Trowbridge, and 2300 N Street NW., Washington, DC. 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or request for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 18, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Local Public Document Room, University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Bethesda, Maryland, this 22nd day of June, 1988.

For the Nuclear Regulatory Commission.

Kenneth E. Perkins,

Director, Project Directorate III-3, Division of Reactor Projects, III, IV, V, and Special Projects.

[FR Doc. 88-14607 Filed 6-28-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council (WHSC); Meeting

The White House Science Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will meet on July 7 and 8, 1988 in Room 5104, New Executive Office Building, Washington, DC. The meeting will begin at 6:00 p.m. on July 7, recess and reconvene at 8:00 a.m. on July 8, 1988. Following is the proposed agenda for the meeting:

(1) Briefing of the council, by the assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

The July 7 and 8 meetings will be closed to the public.

The briefings on the current activities of OSTP necessarily will involve discussion of material that is formally and properly classified in accordance with the provisions of Executive Order 12356 in the interest of national defense or for foreign policy reasons. This is also true for the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552 b.(c) (1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal

nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552 b.(c)(6).

June 22, 1988.

Barbara J. Diering,

Special Assistant, Office of Science and Technology Policy.

[FR Doc. 88-14633 Filed 6-27-88; 9:37 am]

BILLING CODE 3170-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of public meeting.

SUMMARY: The Physician Payment Review Commission will hold a public meeting on Thursday, July 14, 1988, from 9:00 a.m. to 5:30 p.m. and Friday, July 15, 1988 from 8:30 a.m. to 1:30 p.m. The meeting will be held in the West End Ballroom A and B of the Washington Marriott Hotel, 1221 22nd Street NW.

The agenda for the meeting on the morning of July 14 will include a report by William Hsiao on his resource-based relative value scale study and an update on the development of a Medicare fee schedule for radiology. The afternoon session, beginning at 1:30 p.m., will include a presentation on Medicare reform and private payers, a report by Janet Mitchell on her analysis of trends in the volume of services paid for by Medicare, and a series of updates on work being conducted by Commission staff. There will be time for public comment at the end of the session.

The agenda for July 15 includes a panel discussion on special aspects of caring for elderly patients, a session on physician incentive plans and quality assurance in HMOs, discussion of plans for a Commission conference on practice guidelines and review of the Commission's work plans.

ADDRESS: The Commission office is located in Suite 510, 2120 L Street NW., Washington, DC. The telephone number is 202/653-7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653-7220.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 88-14590 Filed 6-28-88; 8:45 am]

BILLING CODE 6820-SE-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25714; File No. SR-MCC-88-3]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Clearing Corp. Relating to the Bond Comparison System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 3, 1988, the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Available upon request are procedures relating to Midwest Clearing Corporation's ("MCC") Bond Comparison System, a clearing and comparison system for municipal bonds, certain corporate bonds and Unit Investment Trusts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) The Bond Comparison System (BCS), a system for clearance and comparison of trades in the bond market, is essentially an expansion of MCC's present Municipal Bond Comparison System. In addition to the processing of eligible municipal bond securities, the enhanced system will also process over-the-counter corporate bonds, New York and American Stock Exchange listed corporate bonds, and unit investment trusts.

As in MCC's OTC Comparison System, BCS buying and selling brokers report trades to their respective clearing facilities. Transaction details are validated and compared and the results reported on the daily comparison lists (contracts) sent to each side of the trade.

BCS will facilitate the book-entry, as well as physical settlement of bonds in the aforementioned markets. Clearing services now available to these markets include Depository Delivery Instructions, Correspondent Receipts and Payments, Correspondent Deliveries and Collections, Envelope Settlement Services and Special Securities Movements.

MCC's rules provide for a limited category of participation called Municipal Comparison Only Participants. As is set forth more clearly in MCC's rules, Municipal Comparison Only Participants agree to use the facilities of MCC for purposes of comparing municipal securities transactions. Accordingly, BCS will not affect these limited Participants and they are not authorized to use MCC for the clearance and settlement of New York and American Stock Exchange Corporate Bonds, OTC Corporate Bonds and UTS.

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934, as amended (the "Act"), in that it promotes the prompt and accurate clearance and settlement of bond and UIT securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspections and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization.

All submissions should refer to File No. SR-MCC-88-3 and should be submitted by July 20, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 23, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14608 Filed 6-28-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25840; File No. SR-NASD-88-22]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Proposed Rule Change Relating to Syndicate Expense Statements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 17, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend section 66 of the Uniform Practice Code ("Code") to require syndicate managers of public offerings to provide members of underwriting syndicates with itemized statements detailing the expenses incurred by the syndicate.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Section 66 of the Code requires final settlement of syndicate accounts by the syndicate manager within 90 days following the syndicate settlement date. Syndicate accounts are ordinarily established by underwriting groups to process the income and expenses of the syndicate in distributions of corporate securities.

As a result of concerns about the lack of detail provided by syndicate managers in syndicate settlement statements, the NASD considered the need to require syndicate managers to provide to members of underwriting syndicates itemized statements of the expenses incurred by the syndicate. The Municipal Securities Rulemaking Board Rule G-11(h) currently requires an itemized statement in municipal underwritings. In comparison to syndicate settlement statements issued under Rule G-11(h), syndicate settlement statements used in non-municipal underwritings are diverse in format and generally provide little or no detail about the nature of expenses incurred by the syndicate. The NASD is concerned that the lack of detail in the syndicate expense statement reduces the syndicate manager's accountability for syndicate funds and has determined that a detailed expense statement could result in more care being taken by syndicate managers in determining actual syndicate expenses.

Therefore, the NASD is proposing to amend section 66 of the Code to require syndicate managers to provide an itemized settlement statement to syndicate members no later than the date of final settlement of the syndicate account. Currently, Section 66 requires final settlement to be within 90 days of the syndicate settlement date. The settlement statement is proposed to be required to include, where applicable, the following expense categories: Legal fees; advertising; travel and entertainment; closing expenses; loss on oversales; telephone, postage, communications; co-manager's expenses; computer, data processing charges; interest expense; and miscellaneous. The proposed rule change also provides that the "miscellaneous" category should include only minor items that cannot be easily categorized elsewhere in the statement and that the amount under miscellaneous should not be disproportionately large in relation to other items. It is anticipated that any other major expenses enumerated in the rule would be itemized separately.

The NASD believes the proposed rule change in consistent with the provisions of section 15A(b)(6) of the Act, as the proposed rule change removes an impediment to a free and open market and promotes just and equitable principles of trade by requiring that syndicate managers provide members of underwriting syndicates with itemized statements detailing the expenses incurred by the syndicate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change imposes any burden on competition not necessary nor appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Purpose Rule Change Received from Members, Participants, or Others

On December 30, 1987, the NASD published the proposed rule change to section 66 of the Uniform Practice Code for membership comment in Notice to Members 87-88. Thirty-three comments were received which addressed the proposal to amend section 66 to require itemized syndicate expenses statements.[1] Thirty-two of the thirty-

[1] Notice to Members 87-88 (December 30, 1987) also published for comment a proposal to require that syndicate managers pay or settle all sales commissions or concessions on the syndicate settlement date. A total of 36 comment letters were received in response to the Notice, of which 33 commented on the proposal to require itemized syndicate expense statements and three only commented with respect to the prompt settlement of commissions. The NASD is not proposing to amend section 66 to require the prompt settlement of commissions.

three commentators were in favor of the proposed rule change.

The one commentator opposed to the amendment, while agreeing that syndicate members should receive a full accounting of syndicate expenses, stated that the proposed rule change is beyond the scope of the Uniform Practice Code. The commentator argued that, in the absence of any public interest or investor protection issues, the NASD should not attempt to regulate contractual business relationships between syndicate members. It was urged that the NASD should leave the resolution of business transactions to the parties involved in the transactions.

The NASD has considered this comment and, in light of the other comments received in favor of the proposed rule change and the adoption of Rule G–11(h) by the Municipal Securities Rulemaking Board, believes that the proposed rule change is within the scope of the Uniform Practice Code and should be adopted.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation Of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–88–22 and should be submitted by July 20, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: June 23, 1988.

[FR Doc. 88–14609 Filed 6–28–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25842; SR–NYSE–87–18]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

I. Introduction

The New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted for Commission consideration, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change that would codify its members' ability to install and maintain telephone lines to communicate with non-members located off the Exchange floor. The proposed rule, however, would limit such communication links to the member's floor booth and would prohibit the use by members of portable telephones on the Exchange floor. In addition, the proposed rule change would permit a specialist unit to maintain telephone linkages to its off-floor offices but would prohibit using such telephones to transmit to the floor orders for the purchase or sale of securities.

In its filing, the NYSE states that this proposal is a response to the Commission's May 6, 1987 Order ("May 6 Order") setting aside actions by the Exchange denying two of its members, William J. Higgins and Michael D. Robbins, permission to install telephone connections to communicate from the Exchange floor with non-member customers located off-floor.[3]

On February 7, 1986, the Commission had instituted administrative proceedings under section 19(d) of the Act to review the NYSE's actions denying Higgins and Robbins permission to install the telephone linkages they requested. During the administrative proceeding to review the NYSE's actions, the Exchange contended that it had a longstanding rule, or policy enforceable as a rule, prohibiting such communication links. The Exchange cited a number of provisions in its Constitution and rules that it alleged constituted its "rule" against telephone communication links to non-members. In the May 6 Order, the Commission held that neither the provisions cited by the NYSE, nor any other provisions of the NYSE Constitution and rules, viewed either separately or in combination, constituted a rule prohibiting telephone communication between NYSE members on the Exchange floor and non-members located off the floor. Accordingly, pursuant to section 19(f) of the Act, the Commission set aside the NYSE's denial of Higgins' and Robbins' requests and ordered the NYSE to take immediate action to comply with their requests for the installation of telephone connections that would permit communication from the floor with non-member customers located off-floor.

On May 11, 1987, the NYSE filed with the Commission a request for a stay of the May 6 Order. On May 27, 1987, the Commission issued an order granting a stay of the May 6 Order until June 10, 1987, in order to provide the Exchange with time to evaluate what, if any, procedures needed to be developed to accommodate telephone communications with non-member customers.[4] The Commission's stay order expired on June 10, 1987, and Higgins and Robbins began using their portable telephone and booth telephone, respectively, on June 11, 1987.[5] Subsequently, on June 12, 1987, the NYSE submitted the proposal on telephone access addressed in this Release.

II. Description of Proposal

The NYSE proposes to amend its Rule 36, which currently regulates the establishment of communication links between the office of a member or member organization and the Exchange floor. Under the proposal, Rule 36 would

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1987).

[3] Securities Exchange Act Release No. 24429, May 6, 1987, 38 SEC Doc. 432. Higgins requested permission to have an outside line connected to the telephone in his floor booth and, later, requested permission to use a portable telephone on the Exchange floor. Robbins requested an outside telephone line connected to the telephone in his floor booth.

[4] Securities Exchange Act Release No. 24515, May 27, 1987, 38 SEC Doc. 783.

[5] It is the Commission's understanding that as of April 28, 1988, the NYSE has approved 343 requests from members for installation of outside lines in member's floor booths. During this period the Exchange, however, has denied two requests from members for permission to use portable telephones on the Exchange Floor and one request from a specialist unit for an unrestricted outside telephone line. One request from a member for permission to use a portable telephone is currently being reviewed by the Exchange. Telephone conversation between Robert Sevigny, Attorney, Division of Market Regulation, and Richard D'Angelo, Director, Floor Services, NYSE, on May 11, 1988.

be amended to require NYSE approval for requests for communication links between members on the Exchange floor and any other location.[6] A new Subsection .20 would be added to Rule 36 providing that, with Exchange approval, a member may maintain a telephone line permitting him to communicate from the Exchange floor with non-members located off-floor. Subsection .20 would limit the installation of such lines to the booth location of the member. It further provides that the Exchange will not approve the use of a portable telephone on the floor.[7]

The proposed new Subsection .30 would permit specialist units, subject to Exchange approval, to maintain a telephone line at their trading post locations on the Exchange floor to enable the units to communicate with their off-floor offices or clearing firm. Subsection .30 would prohibit specialist units from using such telephones for the purpose of transmitting to the floor orders for the purchase or sale of securities, but would permit the entering of options or futures hedging orders through its off-floor office or its clearing firm.[8]

In its filing, the NYSE states that the purpose of the proposed rule change is to state explicitly the Exchange's policy regarding the installation and maintenance by members of telephone communication links between the Exchange floor and off-floor locations. The Exchange states that it has concluded it is now appropriate to allow telephones in booth spaces on the Exchange floor to be connected to permit communication between the members on the floor and non-member customers located off-floor. The NYSE believes that such communication links may enable floor brokers to compete more effectively for order flow than previously was possible, and could benefit customers by exerting downward pressure on commission rates. In addition, the Exchange states that institutional traders have indicated that such communication links may improve the execution of orders by reducing uncertainty as to how an order is to be executed and by enabling traders to alter instructions more quickly in response to changing market conditions.

Concerning the proposed prohibition against the use of portable telephones on the NYSE trading floor, the Exchange states that it does not believe that it is either necessary or appropriate to allow the use of portable telephones on the trading floor. The Exchange believes that the use of portable telephones will provide non-members with access to the very point of the trade, which the NYSE believes should remain a prerogative of membership. In addition, the NYSE believes such access might impugn the integrity and fundamental fairness of its market. The Exchange suggests that a non-member customer in direct communication with his broker on the trading floor might have, "at least on some occasions, significant advantages over the customer who has the ability to speak only with his registered representative, or the off-floor trading desk of a member firm, or the booth space of a member or member organization at the edge of the trading floor."

The Exchange is concerned that, while such advantages could benefit a limited number of non-member customers, the vast majority of customers could be disadvantaged by the lack of such direct communication access to the point of the trade. In the NYSE's view, it is reasonable to assume that the largest and most active non-member customers, generally institutions rather than individuals, would be offered the advantage of such direct communication. As a result, the Exchange believes that smaller customers may justifiably feel that they were treated unfairly and discriminated against. The Exchange is concerned that customers' perceptions of this unfairness may erode confidence in the basic integrity of the NYSE's market and further discourage investors, especially smaller investors, from investing in NYSE listed securities. The NYSE believes that such a result would be at odds with the Exchange's long standing reputation as a highly visible market, open to all investors and operating under fair procedures.

With respect to the provision prohibiting the use of telephone lines at specialist trading posts to transmit orders to the floor from off-floor locations, the NYSE states that the purpose of this restriction is to avoid providing a customer with the special advantage that would result from the ability to transmit orders directly to a specialist for execution in a trading crowd. The Exchange believes that this restriction is consistent with the proposed prohibition on the use of portable telephones on the trading floor.

III. Comments on the Proposed Rule

The Commission has received four comment letters on the NYSE proposal.[9] William J. Higgins, one of the floor broker petitioners involved in the May 6 Order, submitted a comment letter, dated July 30, 1987, ("July 30th letter") and affidavit opposing that portion of the proposed rule change that would prohibit the use of portable telephones on the Exchange floor.[10] The NYSE submitted a letter in response to allegations made in Higgins' July 30th letter.[11] In response to the NYSE comment letter, Higgins submitted a second comment letter rebutting statements made in the NYSE's September 10th letter.[12] Merrill Lynch submitted a comment letter opposing the NYSE's proposal to allow members to communicate from their booths on the Exchange floor with non-member customers located off the floor.[13] Merrill Lynch urged the Commission to prohibit such non-member communication access to the Exchange floor unless it could ensure such access would be made available to all investors. These comments are summarized below.

In his July 30th letter and affidavit, Higgins states that the NYSE's proposed prohibition on the use of portable telephones on the Exchange floor would impose a burden on competition that is neither necessary or appropriate under the Act, and would be particularly unfair to the independent "two-dollar" floor brokers. In support of this, Higgins' notes that the NYSE, which opposed any direct telephone communication links

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[6] Subsection .10 of Rule 36 would be amended to specify that the telephone company will not recognize requests for the installation of any such communication links unless such orders are issued by the Exchange directly to the telephone company.

[7] The NYSE stated in its filing that, under the proposed rule change, Higgins would no longer be permitted to use a portable telephone on the Exchange floor.

[8] The NYSE has submitted a proposed rule change (SR–NYSE–88–14) that would amend this provision to permit a specialist unit to use such a telephone to enter options or futures hedging orders through a member on the floor of an options or futures exchange. Notice of this proposed rule change was provided in Securities Exhange Act Release No. 25694, May 12, 1988, and published in the **Federal Register** (53 FR 17812, May 18, 1988). The Commission notes that options hedging orders by specialists would, of course, continue to be subject to other NYSE restrictions on such orders. *See* NYSE Rule 105 and the NYSE's "Guidelines for Specialists; Specialty Stock Option Transactions Pursuant to Rule 105."

[9] Notice of the NYSE's proposed rule change was provided in Securities Exchange Act Release No. 24625 (June 22, 1987) 52 FR 24576 (July 1, 1987).

[10] Letter from John T. Buckley, Counsel for Higgins, to Jonathan G. Katz, Secretary, Commission, dated July 30, 1987.

[11] Letter from James E. Buck, Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated September 10, 1987 ("NYSE's September 10th Letter").

[12] Letter from John T. Buckley to Jonathan G. Katz, Secretary, Commission, dated October 7, 1987 ("Higgins' October 7th Letter").

[13] Letter from Martin E. Kaplan, Senior Vice President, Merrill Lynch, to Jonathan G. Katz, Secretary, Commission, dated September 15, 1987

between members on the Exchange floor and non-members located off the floor during the prior administrative proceeding, has now changed its position and concluded that it will be beneficial to the marketplace to allow members on the floor, at their booth spaces, to communicate with non-members located off-floor. Higgins contends that the NYSE's reversal in their assessment of the impact of telephone access is a tacit admission that its prior reasoning was wrong and that it is "pro-competitive" for members to be able to speak from the Exchange floor with non-members located off the floor, either by use of a wired or portable telephone. In this regard, Higgins believes that the benefits that will result from permitting members to speak with non-members from booth locations also will result from the use of portable telephones.

Higgins suggests that the NYSE's argument that investor confidence will be undermined by a members' use of a portable telephone on the floor, even if it is being used from a distance further from trading crowds than telephones installed in many members' booths, is disingenuous and inconsistent. He notes that numerous booth telephones are located near several trading crowds and that, in this way, the Exchange permits fixed telephone communication lines from or near trading crowds that can be used to communicate with non-members. Accordingly, Higgins concludes that there is no difference between the use of booth telephones from or near trading crowds and the use by members of portable telephones.[14]

In his letter and affidavit Higgins further argues that there are numerous Exchange telephones (so-called "yellow telephones") at various locations on the trading floor that permit members to communicate with the clerks in their floor booth through the member's booth telephone. He contends that several of these telephones have the capability of tying in, through the member's booth telephone, with the trading desk of the particular member firm and, ultimately, to be linked to the telephones of non-members located off-the-floor. Higgins further contends that the Exchange is making available to members the necessary equipment to permit telephone conferencing from the yellow telephones through the member's booths to non-members located off-floor. According to Higgins, this means that a member while in the trading crowd, or by stepping a few feet from the trading crowd, can telephone his booth from a yellow telephone and, through conferencing to a non-member, can execute a customer's order during, or within moments after, such a telephone call.[15]

In the NYSE's September 10th response letter, the Exchange concedes that, on occasion, a large and active trading crowd can encroach on nearby member booth locations, allowing members at those booths to execute orders more efficiently. The Exchange argues, however, that such competitive advantages are minimal, temporary, and unpredictable, and do not warrant unlimited floor access through portable telephones. The NYSE reiterates its belief that portable telephone access would provide non-members with voice access to the very point of the trade and undermine investors' belief in the integrity and fairness of the market.

In its letter the Exchange also specifically denies Higgins' assertion that the yellow telephones can be used to conference directly with non-member customers located off-floor. The Exchange states that the telephones can be used by members on the floor only to communicate with persons inside the exchange and that the telephones are generally used by members to communicate with the clerk in their booth space in order to pick up orders, receive corrections, or perform other such functions. The NYSE further states that it has no intention to permitting the yellow telephones to be used for anything more than communication with member's booth spaces.

In response to the NYSE's September 10th letter, Higgins submitted a second comment letter, dated October 7, 1987. Higgins argues that in the NYSE's September 10th letter the Exchange concedes that the proposed prohibition on the use of portable telephones has an anti-competitive effect and that, on the basis of this concession, the proposed rule should be disapproved by the Commission for failure to meet the requirements of the Act. Higgins' letter also reasserts the arguments previously advanced in his July 30th letter opposing the proposed NYSE ban on the use of portable telephones, especially concerning the effect that the layout of members' booths on the trading floor will have on access to trading crowds.

Merrill Lynch, in its comment letter, takes a very different view of the NYSE proposal from that expressed by Higgins. First, the firm argues that it is not in the public interest to allow non-member communication directly to the Exchange floor because it will not be possible to accommodate all investors who may desire such access and that, therefore, fairness requires that such non-member communication not be permitted. In support of this view Merrill Lynch argues that direct voice communication to the NYSE floor would be limited to a few large investors.

Merrill Lynch also contends that the limited size of the trading posts and the limited space that would be available for equipment needed to accommodate non-member telephone access makes it inevitable that only a fraction of the investors who might wish to obtain such access will be able to do so. As a result of this, the firm concludes that such access will be limited to a small number of major investors whose resources and influence already assure tham of advantages that the average investor does not command. Merrill Lynch believes that, as a consequence, the average investor will receive the impression that they are at disadvantage to the institutions and major investors who are able to receive and act upon information ahead of the general public.

Second, Merrill Lynch argues that, if the trend toward declining individual participation in the market is accelerated by the inequities in non-member access, it could result in greater volatility among exchange traded securities. The firm contends that individuals, believing that their interests are being subordinated to institutional investors, could limit their participation to packaged products, such as mutual funds, and thereby further reduce the steady flow of small individual orders which provide depth and liquidity to the market.

For these reasons, Merrill Lynch urges the Commission to prohibit non-member access altogether, except under conditions that make it available to all. Should the Commission not choose this course of action, the firm urges, at a minimum, that the Exchange's proposed restriction of such non-member access to the member's floor booths should be approved.

IV. Discussion

Section 6(b)(5) of the Act requires that the rules of an exchange be designed to "prevent fraudulent and manipulative

[14] In his affidavit, Higgins notes that, although he used his telephone extensively in the nearly six week period between June 11, 1987 and the date of the submission of his affidavit, he received no objection to his use of a portable phone from members or investors. He also states that several other members of the Exchange have requested permission to use portable telephones on the trading floor but have been denied permission by the Exchange. *See* note 5, *supra*.

[15] In his July 30th letter Higgins also incorporates by reference arguments made in briefs submitted on his behalf in the previous administrative proceeding.

acts and practices, to promote just and equitable principles of trade, * * * to remove impediments to and perfect the mechanism of a free and open market * * *, and, in general to protect investors and the public interest * * * ." Section 6(b)(8) requires that the rules of an exchange "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]." Section 11A(a)(1)(C)(ii) states the Congressional finding that "it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure * * * fair competition among brokers and dealers * * * ." For the reasons set forth below, the Commission has concluded that the NYSE proposal is consistent with the requirements of the Act, particularly sections 6(b)(5), 6(b)(8) and 11A (a)(1)(ii), and has determined that the NYSE's proposed rule change should be approved.

First, the Commission agrees with the NYSE's position that member to non-member telephone communication from floor booths may enable smaller floor broker firms to compete more effectively for order flow and can result in benefits to investors by improving execution of orders. Under the NYSE's prior unwritten policy prohibiting such communication links, two-dollar brokers were economically dependent on orders received by the upstairs offices of the larger member firm that were then distributed to the various floor brokers for execution. With telephone linkages to customers from their floor booths, small floor brokers will be able to negotiate more effectivley for direct institutional order flow. The enhanced equality among the various floor brokers in the competition for customer orders could result in a downward pressure on commission rates, as well as competition, in terms of services offered to customers, between two-dollar brokers on the floor and the larger firms with upstairs offices.

The Commission appreciates the concerns expressed by Merrill Lynch that only a limited number of investors would have the opportunity to communicate directly with a member on the Exchange floor, and that those investors with direct access to the floor might again an occasional advantage over other investors who do not have such direct communications access. This inequality, however, will continue to exist whether or not members can establish direct telephone links with customers from their booths or are forced to use their upstairs office as an intermediary. The NYSE proposal merely makes customer access more efficient. Thus, the additional time and place advantage accruing to institutional investors from the NYSE proposal is slight compared to the significant benefits to this market in terms of increased competition. Further, broker-dealers regularly provide various services to customers based upon an ability to pay for the services (e.g., research, transmission of quotation information), and such services may be deemed to provide an advantage to those who receive them. The Commission does not believe that direct access to floor booths will supply institutional customers with such an increased additional advantage so as to impugn seriously the perception of fair access to the NYSE.

Based on the above, the Commission concludes that the Exchange's proposal to permit members to communicate from their floor booths with members located off-floor is reasonable and is consistent with the requirememts of sections 6(b)(5), 6(b)(8) and 11A(a)(1)(C)(ii) of the Act.

The NYSE's proposed Rule 36.20 also would prohibit members from using portable telephones on the Exchange floor.[16] As noted above, in its filing the NYSE states that use of portable telephones would allow members to communicate directly with non-member customers from the trading crowd, thereby providing the non-member with access to the very point of the trade. The Exchange contends that, while this type of communications link could benefit some limited number of non-member customers, the vast majority of customers would be disadvantaged by their lack of access to the point of the trade. The NYSE believes that customers justifiably could feel they have been unfairly treated and discriminated against, and thus lose confidence in the basic integrity of the Exchange's market.

The Commisson agrees with the NYSE's contention that use of a portable telephone in the trading crowd is different from use of a booth phone. The ability of a customer to communicate directly with a broker in the trading crowd would provide a significant time and place advantage to the customer, who invariably will be a large or institutional customer. Unlike the smaller advantage accruing from access to floor booths, such a large advantage to a relatively few large institutions could create a perception of unfairness or inequality. As the Merrill Lynch letter indicates, the NYSE has a legitimate concern that this perception could result in less orders from small investors which could hurt liquidity in its marketplace.

The Commission does not agree with Higgins' claim that, in terms of providing non-members with access to the trading floor, there is no reasonable basis for distinguishing between a member's ability to communicate with non-member customers from the trading crowd by using a portable telephone and communication with non-member customers from a telephone in a floor booth near the trading crowd. There is a marked difference in being near a trading crowd versus actually in a crowd. Orders can be executed only at the specialist post, not simply near it. New bids and offers can be entered only in the crowd, not simply near it. Aside from the ability to enter and execute orders, actual crowd presence could enhance substantially the ability to hear competing bids and offers as well as discover other market information.[17]

The Commission does not agree with Higgins' contention that the proposed NYSE rule will impose an unnecessary or inappropriate competitive burden on floor brokers. First, while some members and member organizations may have a limited advantage due to the proximity of their floor booths to the trading crowd, we believe this advantage is both transitory and minor. The NYSE contends that the size of the trading crowd around a particular trading post will vary significantly and unpredictably from day to day. This severely limits the ability of a member to communicate with non-member customers and execute orders in the trading crowd from his booth telephone on any regular basis. Second, while it is clear that under any system for the allocation of booth space on the NYSE floor some members or member organizations will end up closer to a given trading post than other members, the proximity of a member to one trading post inevitably will place that member further away from the trading posts for other stocks in which he may also wish to trade.

Further, we note that the yellow telephones near the trading crowds help to reduce whatever slight competitive advantage a particular member might have because his booth is located close to an important trading post. The yellow telephones permit floor brokers to communicate with their trading booths from near the trading crowd. As noted in

[16] As noted previously, if approved, this provision would prohibit Higgins from using his portable telephone on the Exchange floor.

[17] For example, if a specialist displays an electronic order book, it may be impossible to view the book outside of the trading crowd.

the NYSE's September 10th letter, the yellow telephones on the floor were installed by the Exchange for the specific purpose of providing members the capability to communicate with their booths to receive orders, while allowing them to remain in the area of the particular trading post they are working from.

Moreover, there are other regulatory grounds upon which the NYSE reasonably can distinguish between booth phones and portable phones. First, direct access to the point of trade could provide institutional customers with the ability to "tape race" by executing transactions in the options markets prior to the public dissemination of stock price changes. The possiblility of this occurring is enhanced by the fact that portable telephones could be used by customers to listen to the trading crowd activity on a continuous basis. Second, upstairs firms might be forced to respond to the competitive advantages enjoyed by persons employing portable phones by equipping their floor brokers with portable phones to provide continuing reports from active crowds. The resulting increased trading crowds have the potential to create substantial congestion on the floor of the exchange and substantially decrease the efficiency of the exchange's trading system.

Nevertheless, the Commission believes that approval of the NYSE's proposed ban on portable telephones is a close question which involves carefully weighing the competitive effect of the proposal versus the regulatory benefits sought to be achieved by the proposal.[18] Although, as discussed above, the NYSE has outlined reasonable concerns for proposing this ban, the Commission also recognizes that valid arguments can be made as to the benefits of permitting portable telephones on a trading floor. Section 6(b)(8), however, does not require the Commission to determine that an exchange's proposed rules are the least anti-competitive manner of achieving a regulatory objective. Rather, the Act simply requires the Commission to weigh the competitive impact of a rule and make specific findings as to the justification of any limitation or restraint of competition that would be involved.[19] In the Commission's view, the proposed NYSE prohibition on the use of portable telephones on the Exchange floor constitutes a reasonable response by the NYSE to its regulatory concerns, discussed above, associated with the use of portable telephones on the floor, and thus is consistent with sections 6(b)(5) and 6(b)(8) of the Act.

The Commission notes that, unlike its review of the NYSE's actions in the administrative proceeding leading to the May 6 order, the current proceeding involves a proposed rule which reflects the considered judgment of the NYSE regarding the attributes of Exchange membership and the organization of its trading floor. Absent more compelling evidence of an adverse competitive effect, the Commission is unwilling to disturb an Exchange decision regarding such a specific regulation of the organization of its trading floor.[20]

It should also be understood, however, that the NYSE's decision to prohibit the use of portable telephones on the floor is not the only approach that could be consistent with the requirements of the Act. This order does not foreclose an exchange from devising a program that would permit the use of portable telephones.[21]

As discussed above, the NYSE also has proposed a provision in the proposed rule (Rule 36.30) that would permit a specialist unit to maintain a telephone line at its trading post on the Exchange floor enabling it to communicate with its off-floor offices or with the off-floor offices of its clearing firm. This provision would prohibit the specialist unit from using the telephone to transmit to the floor orders for the purchase or sale of securities.

The NYSE, in its filing, describes this provision as a codification of current NYSE policy. The Commission believes that it is reasonable to permit specialist units to communicate from the Exchange floor with their off-floor office or clearing firm. By allowing such necessary communication links, the Exchange is enabling specialist units to perform their important function more effectively on the NYSE floor. This is consistent with section 6(b)(5), in that it will facilitate transactions in securities.

Similarly, the Commission believes that the NYSE's proposed prohibition against the use of such communication links to transmit to the floor orders for the purchase or sale of securities is reasonable in view of the crucial role specialists have in maintaining the stability of the market. To the extent that portable telephones would provide an informational advantage to large customers, specialist telephone access would create an even greater informational inequality. The Commission notes that none of the commentators were critical of this portion of the NYSE proposal and none of the commentators suggested that this provision would impose an unnecessary or inappropriate competitive burden on specialist units in conflict with the requirements of section 6(b)(8) of the Act.

In view of the above the Commission concludes that the NYSE's proposed Rule 36.30 is reasonable and is consistent with the requirements of the Act, particularly section 6(b)(5), 6(b)(8) and 11A(a)(1)(C)(ii).

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

By the Commission. A separate concurring opinion by Commissioner Grundfest will be published in Release No. 34-25842A.

Dated: June 23, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14610 Filed 6-28-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25841; File No. SR-OCC-87-24]

Self-Regulatory Organizations, Options Clearing Corp.; Order Granting Approval to a Proposed Rule Change

On December 31, 1987, the Options Clearing Corporation ("OCC") filed a proposed rule change with the Commission under section 19(b) of the Securities Exchange Act of 1934 ("Act"). The proposal makes permanent a temporary rule that enables OCC to waive clearing member margin requirements in certain circumstances.[1] Notice of the proposal appeared in the Federal Register on March 11, 1988.[2] No comments were received. On March 16, 1988, and June 22, 1988, OCC filed amendments to the proposal. This Order approves the amended proposal.

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[18] *See Clement v. Securities and Exchange Commission.* 674 F.2d 641 (7th Cir. 1982).

[19] *See* S. Rep No. 94-75, 94th Cong., 1st Sess., 13 (1975).

[20] We also note that consistent with the Commission's May 6 order, *supra* note 3, other types of access that are not specifically prohibited by NYSE rules would be permitted.

[21] The Commission's weighing of an SRO's considered judgment concerning the impact in its marketplace of a structural change is consistent with previous actions of the Commission. *See, e.g.,* Securities Exchange Act Release No. 23768, November 3, 1986, 51 FR 41183.

[1] To enable OCC to respond to extraordinary market conditions in October 1987, the Commission approved, on a temporary, accelerated basis, a rule change substantially in the form of the proposed rule change. *See* Securities Exchange Act Release No. 25059 (October 23, 1987), 52 FR 41645. *See also* Securities Exchange Act Release No. 25419 (March 4, 1988), 53 FR 7996, extending the effectiveness of the rule through May 1988.

[2] Securities Exchange Act Release No. 25420 (March 4, 1988), 53 FR 7996.

I. Description of the Proposal

The proposal makes permanent OCC Rule 609A dealing with clearing member margin requirements, which, by its terms, expired on May 31, 1988. Rule 609A authorizes the Chairman or the President of OCC to waive, in whole or in part, conditionally or unconditionally, any deposit of margin that would otherwise be required to be made by any clearing member in any account at any time during any business day.[3] Such a waiver must be based upon a determination that it: (1) Is advisable in the interest of maintaining fair and orderly markets or is otherwise advisable in the public interest and for the protection of investors, and (2) is consistent with maintaining the financial integrity of OCC.

Currently, Rule 609A subjects OCC to certain requirements. Specifically, the rule requires OCC staff to consult with Commission staff before granting a waiver and, after granting a waiver, to make and keep a record of action taken under the rule. The proposal replaces the prior consultation requirement with the requirement that OCC's Chairman or President use his best efforts to consult with the Commission staff prior to taking action under the rule. In the event the Chairman or President is unable to accomplish prior consultation, he would advise the Commission, as soon as practicable, after any waiver was granted. The proposal retains the requirement in Rule 609A that OCC maintain with its corporate records a record of any action taken under the rule.

On March 16, 1988, and June 22, 1988, OCC amended the proposal. In addition to requiring OCC's Chairman or President to use his best efforts to consult with the Commission prior to taking action under the rule, the amendment requires OCC to advise the Commission and OCC's board of directors, in writing, of any action taken and the reasons therefore as soon as practicable after the action is taken. Additionally, at the request of Commission staff, OCC amended the standard for applying the rule, replacing the conjunction "or" with the conjunction "and."

II. OCC's Rationale for the Proposal

OCC believes that the proposed rule change is consistent with the purposes and requirements of section 17A of the Act. OCC states in its filing that the proposed rule change serves the public interest and the protection of investors by providing OCC needed flexibility in dealing with extraordinary market conditions.

III. Discussion

The Commission believes the proposal, as amended, is consistent with the Act. As discussed below, the Commission believes the proposal provides OCC management the flexibility to deal with extraordinary market conditions. The Commission also believes that the proposal is consistent with OCC's obligations to safeguard funds and securities and to maintain appropriate financial responsibility standards.

The Commission agrees that it is appropriate for OCC to be able to adjust its formulas for calculating margin requirements, either with respect to particular clearing members or generally, to help assure necessary liquidity in extraordinary market circumstances. For example, the Commission notes that OCC's margin formulas reduce the market value of unsegregated long options positions for margin credit purposes. Those reductions could be unnecessarily large in extraordinary circumstances and when applied to deep-in-the-money options with substantial intrinsic value, thus adversely affecting the liquidity of OCC clearing members. Also, during October 1987, at least one OCC clearing member held options and futures positions in the nature of intermarket hedges at OCC and its futures clearing organization subsidiary, the Intermarket Clearing Corporation ("ICC"), such that losses in one market would be offset by gains in other markets. The Commission recognized that, although certain positions created exposure and margin requirements, other positions provided economic justification for reduced margin as long as the hedge was maintained. The Commission also recognized that a situation could arise where, because of the size and nature of a clearing member's positions, marketwide disruption could result if the positions were liquidated. Therefore, the Commission granted OCC temporary, accelerated approval of Rule 609AQ.[4]

The Commission believes permanent approval of the proposal provides OCC management needed flexibility to deal with extraordinary market conditions while maintaining OCC's obligations to safeguard securities and funds. The Commission notes that OCC's authority under Rule 609A is restricted to the Chairman or President of OCC. Moreover, any action under the rule must be based upon a determination that it is advisable in the interest of maintaining fair and orderly markets, the public interest and for the protection of investors, and is consistent with maintaining the financial integrity of OCC.

In this regard, the Commission would emphasize that it expects this authority to be exercised only in extraordinary circumstances such as experienced during October of 1987 and only then, whenever practicable, with prior consultation of the Commission's staff. As a matter of routine, the Commission expects that OCC will follow its regular procedures and require its members to post additional margin as required by OCC rules or, if OCC determines those rules require excessive margin, amend its rules to reduce its margin requirements.[5] Thus, the Commission does not believe that Rule 609A authorizes OCC to "waive" its margin rules simply because a particular firm or group of firms might encounter an inconvenient or, in OCC's views, unnecessary margin call. Rather, the Commission believes that the term "extraordinary" in the context of Rule 609A envisions a situation where the very act of calling for additional margin, in view of market circumstances, might put significantly greater immediate pressure on the clearing member and, thereby, OCC.

The Commission further believes that the required written report to the Commission stating the action taken and the reasons therefore, and the corporate record that OCC is required to prepare and maintain, should help to assure consideration of all appropriate factors including clearing member liquidity, equitable treatment of clearing members, and OCC's obligation to safeguard securities and funds.

On the basis of the foregoing, the Commission finds that OCC's proposed rule change is consistent with the Act and, in particular, with Section 17A of the Act.

Accordingly, *It Is Therefore Ordered*, under section 19(b)(2) of the Act, that the amended proposal (File No. SR–OCC–87–24) be, and hereby is,

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[3] The term "waive" includes, but is not limited to, adjustments or modifications to OCC's formulas for calculating margin requirements.

[4] OCC used this authority during the market break to relieve a clearing member with intermarket hedge positions of certain OCC margin requirements. OCC thereafter entered into an agreement with the clearing member whereby the member agreed that OCC could transfer funds between its OCC and ICC bank accounts.

[5] In other words, the Commission expects OCC to follow normal rule amendment procedures when it determines to reduce its margin requirements and not use Rule 609A authority as a substitute for rule amendments.

approved, effective May 31, 1988, *nunc pro tunc.*

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 23, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14611 Filed 6-28-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24669; 70-7372
Administrative Proceeding File No. 3-7027]

CSW Credit, Inc.; Central and South West Corp. Order for Hearing on Proposed Acquisition of Nonutility Interest by Registered Holding Company

June 23, 1988.

Central and South West Corporation ("CSW"), a registered holding company, and its wholly owned nonutility subsidiary, CSW Credit, Inc., ("CSW Credit"), 2121 San Jacinto Street, Dallas, Texas 75201, have filed an application-declaration, as amended, pursuant to sections 6, 7, 9(a), 10 and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50(a)(5) thereunder. A notice of the filing of this application-declaration was issued by the Commission on June 18, 1987 (HCAR No. 24415). No requests for a hearing were received. Three comment letters in support of the application-declaration were filed with the Commission by representatives of National Fuel Gas Company, The Columbia Gas Company, Inc. and American Electric Power Company, each a registered holding company under the Act.

By order dated July 19, 1985 (HCAR No. 23767), the Commission authorized CSW to organize and acquire CSW Credit, a corporation created to factor accounts receivable of the CSW electric-utility companies. To finance the operations of CSW Credit through December 31, 1986, CSW was authorized to make equity investments in CSW Credit in an amount up to $80 million, and CSW Credit was authorized to borrow up to $320 million.

Subsequently, by order dated July 31, 1986 (HCAR No. 24157) ("1986 Order"), the Commission authorized CSW Credit to expand its factoring activities to include the purchase of receivables of electric utilities not associated with the CSW system. CSW Credit was to limit its acquisition of receivables from nonassociate utilities so that the average amount of such nonassociate utility receivables for the preceding twelve-month period outstanding as of the end of any calendar month would be less than the average amount of receivables acquired from CSW associate companies outstanding as of the end of each calendar month during the preceding twelve-month period. To finance these expanded activities through December 31, 1988, CSW was authorized to make additional equity investments of up to $40 million in CSW Credit, through either capital contributions or the acquisition of common stock of CSW Credit; and CSW Credit was authorized to sell to CSW up to $40 million of its common stock and to borrow up to an additional $160 million, pursuant to bank lines of credit or through the issuance of commercial paper.

By supplemental order dated February 8, 1988 (HCAR No. 24575), CSW Credit was authorized also to factor accounts receivable of nonassociate gas utilities, within the limitation contained in the 1986 Order. To finance its activities through December 31, 1989, CSW Credit was authorized to borrow up to $320 million and $304 million to factor associate and nonassociate receivables, respectively, and CSW was authorized to make equity investments in CSW Credit of up to $80 million and $76 million in connection with factoring of associate and nonassociate receivables, respectively.

In their amended application-declaration, CSW and CSW Credit now request the removal of the limitation of the 1986 Order upon the factoring by CSW Credit of receivables of nonassociate electric and gas utilities. To finance these expanded activities through December 31, 1989, CSW proposes to make an additional equity investment of $34 million in CSW Credit for a total of $190 million. CSW Credit seeks authority to borrow an additional $286 million, pursuant to bank lines of credit or through the issuance of commercial paper, for a total of $910 million.

It appears to the Commission that it is appropriate in the public interest that a hearing be held with respect to the proposed transaction. Accordingly,

It is Ordered, pursuant to Section 19 of the Act, that a hearing on the application-declaration under the applicable provisions of the Act and the Rules of the Commission be held at a time and place to be fixed by further order, as provided by Rule 6 of the Commission's Rules of Practice (17 CFR 201.6), and that an Administrative Law Judge, to be designated by further order, preside at the hearing. Any person, other than CSW Credit and CSW, who desires to be heard or who otherwise wishes to participate in the proceeding is directed to file with the Secretary of the Commission, on or before July 22, 1988 an application as provided by Rule 9 of the Commission's Rules of Practice (17 CFR 201.9), setting forth the nature and extent of such person's interest in the proceeding and any issues deemed to be raised by this Notice and Order or by the application-declaration. A copy of that request shall be served personally upon CSW Credit and CSW at the address noted above, and proof of such service (by affidavit or, in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. Persons filing an application to participate or to be heard will receive notice of the date and place of the hearing and any adjournments thereof, as well as of other actions of the Commission involving the subject matter of this proceeding.

The Division of Investment Management has advised the Commission that it has examined the application-declaration and the comment letters received by the Commission, and that, upon the basis thereof, the following question is presented for consideration, without prejudice to the Commission's specifying additional matters and questions upon further examination: whether the proposed transaction would be detrimental to the carrying out of the provisions of section 11.

It is Further Ordered that particular attention should be given to the foregoing question at the hearing.

It is Further Ordered that the Division of Investment Management shall be a party to the proceeding.

It is Further Ordered that the Secretary of the Commission shall give notice of the hearing by mailing copies of this Notice and Order by certified mail to CSW Credit and CSW at the address noted above, to National Fuel Gas Company, 10 Lafayette Square, Buffalo, New York 14203, to American Electric Power Company, 1 Riverside Plaza, Columbus, Ohio 43215, and to LeBoeuf, Lamb, Leiby & MacRae, counsel to The Columbia Gas Company, 1333 New Hampshire Avenue, NW., Washington, DC 20036; that notice to all other persons be given by publication of

this Notice and Order in the Federal Register; that a copy of this Notice and Order shall be published in the "SEC Docket"; and that an announcement of the hearing shall be included in the "SEC News Digest."

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: June 23, 1988.

[FR Doc. 88-14647 Filed 6-28-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Interest Rates

The interest rate on Section 7(a) Small Business Administration direct loans (as amended by Pub. L. 97-35) and the SBA share of immediate participation loans is ten (10) percent for the fiscal quarter beginning July 1, 1988.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8-4 (d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the July-September quarter of 1988, this rate will be eight and three-quarters (8¾) percent.

Edward J. Myerson,

Deputy Associate Administrator for Finance and Investment.

[FR Doc. 88-14676 Filed 6-28-88; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Diego, will hold a public meeting at 10:00 a.m., on Tuesday, July 19, 1988, in the Federal Building, Room 2-S-14, 880 Front Street, San Diego, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call George P. Chandler, Jr., District Director, U.S. Small Business Administration, 880 Front Street, Suite 4-S-29, San Diego, California 92188 - (619) 557-7252.

June 24, 1988.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 88-14675 Filed 6-28-88; 8:45am]

BILLING CODE 8025-01-M

[Application No. 05/05-5206]

Application for License To Operate as a Small Business Investment Company; Continental Investment Groups, Inc.

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) by Continental Investment Groups, Inc. (Continental), 18530 West Ten Mile Road, Southfield, Michigan 48075 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*).

The proposed officers, directors and shareholders of the Applicant are as follows:

Name	Title or relationship	Percentage of shares owned
Peter Abbo, 3630 South Commerce Road, Walled Lake, Michigan 48088	President and Director	14.5 percent.
Timothy Taylor, 9938 Rutland, Detroit, Michigan 48227	Treasurer & Vice President, Director and Manager.	2.375 percent.
James J. Hoare, 1431 West Lake Drive, Walled Lake, Michigan 48088	Director	9.5 percent.
Karim Sarafa, 25091 Friar Lane, Southfield, Michigan 48034	Director	9.5 percent.
Mark Abbo, 2394 Kettle, Troy, Michigan 48083	Director	

The Applicant, Continental, a Michigan Corporation, will begin operations with $1,050,000 paid in capital and paid in surplus. Continental will conduct its activities primarily in the State of Michigan but will consider investments in businesses in other areas in the United States.

As an SBIC licensed to operate under section 301(d) of the Small Business Investment Act of 1958, as amended, the Applicant will provide financial and management assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the fair enterprise system is hampered because of social economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Southfield, Michigan, area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 20, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-14677 Filed 6-28-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 88-6-33]

Fitness Determination of Air Southeast, Inc.; Commuter Air Carrier Fitness Determination

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination.

SUMMARY: The Department of Transportation is proposing to find that Air Southeast, Inc. is fit, willing and able to provide commuter air service under

section 419(c)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Service Analysis Division, Room 5100, Department of Transportation, 400 7th Street SW., Washington, DC 20590, and serve them on all persons listed in Appendix A to the order. Responses shall be filed no later than July 11, 1988.

TWO FURTHER INFORMATION CONTACT: Bernard A. Calure, Service Analysis Division, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366-1055.

Dated: June 24, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-14665 Filed 6-28-88; 8:45 am]

BILLING CODE 4910-62-M

[Order 88-6-31; Docket 32093]

Proposed Revocation of Domestic All-Cargo Air Service Certificate of Kay Cohlmia d/b/a Cohlmia Aviation

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order proposing to revoke the section 418 domestic all-cargo air service certificate of Kay Cohlmia d/b/a Cohlmia Aviation.

DATES: Persons wishing to file objections should do so no later than July 11, 1988.

ADDRESSES: Objections and answers to objections should be filed in Docket 32093 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P-56, Room 6420), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: June 24, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-14663 Filed 6-28-88; 8:45 am]

BILLING CODE 4910-62-M

[Order 88-6-32; Docket 45324]

Application of Resort Air, Inc., d/b/a Trans World Express for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Resort Air, Inc., d/b/a Trans World Express fit and awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation.

DATE: Persons wishing to file objections should do so no later than July 11, 1988.

ADDRESSES: Objections and answers to objections should be filed in Docket 45324 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara P. Dunnigan, Air Carrier Fitness Division (P-56, Room 6420), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2342.

Dated: June 24, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-14664 Filed 6-28-88; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 22, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1061.

Form Number: 5885.

Type of Review: Extension.

Title: Supervisory Evaluation—ES&D and Single Function Executive Selection.

Description: This form is used for evaluation of applicants for the Executive Selection & Development Program and for Single Functional Executive Positions.

Respondents: Individuals or households, Federal agencies or employees.

Estimated Number of Respondents: 40.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Annually.

Estimated Average Reporting Burden: 40 hours.

OMB Number: 1545-1062.

Form Number: 6423.

Type of Review: Extension.

Title: ES&D Qualifications Questionnaire.

Description: This form is used by the Executive Resources Board and Regional Screening Committees in screening applicants from within and outside the IRS who have applied for the Executive Selection & Development Program.

Respondents: Individuals or households, Federal agencies or employees.

Estimated Number of Respondents: 40.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Annually.

Estimated Average Reporting Burden: 40 hours. Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-14589 Filed 6-28-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 22, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance

Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0021
Form Number: 4587 (5330.4)
Type of Review: Extension.
Title: Application to Register as an Importer of U.S. Munitions Import List Articles.
Description: Persons engaged in the business of importing articles on the U.S. Munitions Import List are required to register with the Bureau and pay a registration fee. The application form facilities the registration and the collection of the registration fees.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 300
Estimated Burden Hours Per Response: 30 minutes
Frequency of Response: Optionally 1–5 years
Estimated Average Reporting Burden: 150 hours
Clearance Officer: Robert Masarsky (202) 566–7077, Burerau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88–14626 Filed 6–28–88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review.

Date: June 22, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0094
Form Number: 1041–A
Type of Review: Resubmission.
Title: U.S. Information Return—Trust Accumulation of Charitable Amounts.
Description: Form 1041–A is used to report the information required in 26 USC 6034 concerning accumulation and distribution of charitable amounts. The data is used to verify that amounts for which a charitable deduction was allowed are used for charitable purposes.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 17,339
Estimated Burden Hours Per Response: 1 hour 26 minutes
Frequency of Response: Annually
Estimated Average Reporting Burden: 23,886 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88–14627 Filed 6–28–88; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 125
Wednesday, June 29, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

THE COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' next scheduled meeting is Thursday, 28 July 1988 at 10:00 AM at the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566–1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC June 23, 1988.

Charles H. Atherton,

Secretary.

[FR Doc. 88–14694 Filed 6–27–88; 10:53 am]

BILLING CODE 6330-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Tuesday, July 5, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: June 27, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–14709 Filed 6–27–88; 10:53 am]

BILLING CODE 6210-01-M

COMMITTEE ON EMPLOYEE BENEFITS OF THE FEDERAL RESERVE SYSTEM:

TIME AND DATE: 4:30 p.m., Monday, June 27, 1988.

The business of the Committee requires that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to: (a) The general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans. Specific item is: Salary administration for the officers of the Benefits Office.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: June 27, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–14708 Filed 6–27–88; 10:53 am]

BILLING CODE 6210-01-M

NATIONAL MEDIATION BOARD

REVISED TIME AND DATE: 2:00 p.m., Tuesday, July 12, 1988.

PLACE: Board Hearing Room, 8th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of June, 1988.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523–5920.

Date of notice: June 22, 1988.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 88–14672 Filed 6–24–88; 5:00 pm]

BILLING CODE 7550-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, July 6, 1988.

PLACE: Board Hearing Room, 8th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of June, 1988.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523–5920.

Date of notice: June 17, 1988.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 88–14701 Filed 6–27–88; 10:53 am]

BILLING CODE 7550-01-M

TENNESSEE VALLEY AUTHORITY

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published June 27, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 8 a.m. (e.d.t.) Wednesday, June 29, 1988.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Additional Matter

The following items are added to the previously announced agenda:

C—Power item

1. Replacement of Revised Home Insulation Program with Proposed Interim Program.

F—Unclassified

13. Proposed deferral of Bellefonte Nuclear Plant Unit I.
14. Changes in benefits for management schedule employees.
15. Delegation of authority to authorize the carrying of firearms.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615–632–8000 or 632–6000 (News Desk), Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202–245–0101.

TVA Board Action

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires the subject matter of this meeting be changed to include the additional item shown above and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below:

Dated: June 24, 1988.

Approved.

Marvin Runyon,

Director and Chairman.

June 24, 1988.

C.H. Dean, Jr.,

Director.

June 24, 1988.

John B. Waters,

Director.

June 24, 1988.

[FR Doc. 88–14679 Filed 6–27–88; 8:40 am]

BILLING CODE 8120–01–M

Corrections

Federal Register
Vol. 53, No. 125
Wednesday, June 29, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 370 and 376

[Docket No. 80350-8050]

Export of Commodities on Board Country Group Q, W, Y, or Z Vessels and Aircraft

Correction

Document 88-13946 beginning on page 23228 in the issue of Tuesday, June 21, 1988, is a proposed rule with request for comments. It was published in error in the "Rules and Regulations" section of the issue. It should have appeared in the "Proposed Rules" section of the issue.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Renewal

Correction

In notice document 88-12610 beginning on page 20687 in the issue of Monday, June 6, 1988, make the following correction:

On page 20688, in the first column, the title of the signer should read "*Acting Associate Commissioner for Regulatory Affairs*".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 61

Preparation of Rolls of Indians

Correction

In proposed rule document 88-12499 beginning on page 20335 in the issue of Friday, June 3, 1988, make the following correction:

§ 61.4 [Corrected]

On page 20337, in the first column, in § 61.4(e)(2), in the fifth line, "August 2, 1988" should read "(60 days from the effective date of the final rule)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-040-07-4212-11;1-25474]

Realty Action; Exchange of Public Lands, Washoe County, NV

Correction

In notice document 88-12936 beginning on page 21738 in the issue of Thursday, June 9, 1988, make the following corrections:

1. On page 21738, in the third column, under Township 41 North, Range 18, "Range 18" should read "Range 18 East".

2. On the same page, in the same column, under Township 42 North, Range 18 East, the land description in Section 01 should read "SW¼NW¼, S½SW¼".

3. On the same page, in the same column, under Township 42 North, Range 19 East, the land description in the first line of Section 35 should read "W½NE¼, E½NW¼".

4. On page 21739, in the first column, under Township 41 North, Range 22, the land description in Section 11 should read "SW¼NW¼, NE¼SW¼, S½SE¼".

5. On the same page, in the second column, under the **DATE** paragraph, "On July 25, 1988" should read "On or before July 25, 1988".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AGL-7]

Transition Area Alteration; Alliance, OH

Correction

In rule document 88-12314 beginning on page 20102 in the issue of Thursday, June 2, 1988, make the following corrections:

1. On page 20102, in the third column, under "**SUPPLEMENTARY INFORMATION**", in the first paragraph, in the fifth line, "Airpack" should read "Airpark".

§ 71.181 [Corrected]

2. On page 20103, in the first column, in § 71.181, under "**Alliance, OH [Revised]**", in the third line, "Airpack" should read "Airpark".

BILLING CODE 1505-01-D

Federal Register

Wednesday
June 29, 1988

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 905

Indian Housing; Revised Consolidated Program Regulations; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 905

[Docket No. R-88-1371; FR-2208]

Indian Housing; Revised Consolidated Program Regulations

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule consolidates in Part 905 all regulations from Chapter IX of HUD's rules (Title 24 of the Code of Federal Regulations) that govern the operations and management of programs administered by Indian Housing Authorities (IHAs), reflecting the change from loan funding to grant funding. It also would permit an IHA to consolidate its homeownership programs (with homebuyer consent), would encourage IHAs to convert families that have lost homeownership potential to rental status, and would permit an IHA determined to have superior administrative capability to have less HUD oversight. There are other ongoing rulemakings affecting these programs that may affect the final product that results from this rulemaking, particularly the numerous ones required to implement the Housing and Community Development Act of 1987. This proposed rule could not keep pace with all of the rules undergoing revision when this one was under preparation, but the final rule will reflect developments in those and intervening rulemakings (e.g., Part 85, which is being developed as a government-wide rule on financial management). Although this entire proposed rule is open to public comment, HUD will give greatest consideration to comments on provisions in this rule that reflect proposed changes in policy, or comments on the organization of the rule.

DATE: Comments are due on or before September 27, 1988.

ADDRESS: Comments on the rule: Comments should be submitted to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for examination by interested persons in the Office of the Rules Docket Clerk at the address listed above.

Comments on the information collection requirements contained in §§ 905.465(g), 905.485(c) and 905.503(d) should be submitted both to the HUD Rules Docket Clerk (identifying docket number and title), at the above address, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for HUD.

FOR FURTHER INFORMATION CONTACT: Patricia Arnaudo, Acting Director, Office of Indian Housing, Room 4232, Department of Housing and Urban Development, Washington, DC 20410; telephone (202) 755-1015. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Since the early 1980's, the Department has been advised by Indian and Alaskan leaders and others involved in the delivery of Indian housing that the public housing regulations were not always relevant in Indian areas. In Fiscal Year 1983, HUD proposed an entirely new Indian housing program which was unanimously opposed by Indian leaders and by Congress. As a result, the Department indicated that it would reorganize (and revise, where necessary) the current Indian housing regulations for programs administered under the United States Housing Act of 1937, to be more easily accessible to Indians.

This proposed rule consolidates into Part 905 all HUD regulations in 24 CFR Chapter IX that affect the Indian housing component of the PIH program. It is the Department's intent to separate Indian housing regulations from standard public housing regulations where it would simplify administration and facilitate more efficient management. Among the topics covered in the proposed Part 905 that are not contained in the current Part 905 are regulations concerning occupancy, financial management, utilities, demolition/disposition, and modernization. The regulations affecting Indian housing that have not been consolidated in Part 905 are those found in Title 24 CFR Subtitle A, and in Subtitle B, Chapters I, VII and XII.

This consolidated Part 905, followed by a comprehensive Indian Housing Handbook, will constitute the controlling HUD guidelines governing the development and operation of Indian housing projects. IHAs will no longer need to maintain extensive catalogs of public housing regulations and handbooks.

In undertaking a revision to the Indian housing development regulations at this time, the Department is responding to a number of concerns raised by client organizations and HUD field offices since the regulation was last revised in 1979. This proposal also reflects dialogue with the Secretary's Committee on Indian and Alaskan Native Housing.

Subpart A—General

The major change to Subpart A is the consolidation of most of the definitions used in this part into a new § 905.102. It is intended that this glossary be all-inclusive, thus eliminating the need for cross-references to defined terms previously carried in other subparts. A few definitions that are used only in one section or subpart appear where they are first used (e.g., § 905.120 concerning Indian preference).

The model Tribal Ordinance has been removed from the rule for economy of space. In addition, although no revision is anticipated at this time, removal of the model form from the regulation would simplify the revision process. For the foreseeable future, copies of the model form, as published in the 1979 final rule, will be available from HUD on request.

The revised Part 905 includes all relevant public housing regulations, and § 905.101(b) makes it clear that Part 905 is the controlling regulation *with respect to the operation of Indian housing and IHAs.*

In reviewing the proposed rule, correspondents are invited to specifically address the issue of the regulations' comprehensive nature and further procedural changes that would make Indian Housing more responsive to the needs of Indian families and tribal governments.

Subpart A—General

New		Old
Sec.		Sec.
905.101	Applicability and Scope	905.101
905.102	Definitions (and def. secs. of other parts)	905.102
905.105	Types of Low-Income Housing Projects	905.103
905.110	Assistance from Indian Health Service and Bureau of Indian Affairs	905.104
905.115	Applicability of Civil Rights Statutes	905.105
905.120	Preferences, Opportunities, and Nondiscrimination in Employment and Contracting	905.106
905.125	Compliance With Other Federal Requirements	905.107 868.9
905.130	Establishment of IHAs Pursuant to State Law	905.108
905.135	Establishment of IHAs by Tribal Ordinance	905.109

New		Old
905.140	IHA Commissioners Who Are Tenants or Homebuyers	905.110
905.145	Administrative Capability Assessment	New.
905.150	Certification of Housing Managers	967.301 thru 967.309

Applicability and Scope—§ 905.101

This section is virtually identical to the current § 905.101, but it reflects the change of Part 905 from a part that contains only selected requirements applicable to Indian Housing to a part that contains a comprehensive list of requirements applicable to Indian Housing.

Definitions—§ 905.102

This section includes nearly all the definitions needed for this part. Most of the definitions now found in the definitions sections of Parts 904, 905, 912, 913, 941, 965, 967, 968, 969, 970, and 990, are included here. All references in those definitions to PHA (public housing agency) have been changed to IHA (Indian housing authority).

Since this is a proposed rule, for ease in comparing the proposed definitions with the current definitions, we have inserted in parentheses following each defined term the section from which the definition was derived. The final rule will omit these references.

The major changes from current definitions are described below:

Common Property. The special provisions regarding condominiums have been omitted because the condominium form of ownership is not appropriate for Indian areas.

Deprogramming. This is a definition derived from the definition of "Units Approved for Deprogramming." Deprogramming is a more universal term.

Elderly Family. The wording of this definition is revised to conform to §§ 912.2 and 913.102, as they are proposed to be amended to conform with recent changes in §§ 812.2 and 813.102.

Equity Account. This term is used in the new Mutual Help program (Subpart D) to take the place of the current Mutual Help program's refundable and nonrefundable reserves, the Voluntary Equity Payments Account and the Monthly Equity Payments Account.

MH Contribution. The provision of "equipment" has been removed as an eligible contribution for a mutual help homebuyer because the statutory authority for such a contribution is limited to "land, labor or materials."

Net Family Assets. This has been clarified to exclude net business assets, *i.e.*, assets that are part of an active business operated by a family member. Examples are fishing boats and farm machinery. This term is used in the determination of family income and rent. The actual income derived from net family assets is measured against the current passbook savings rate of earnings on the value of the assets, and the larger amount is included in family income. The Department believes it would be inappropriate to impute an income potential to business assets that are relied upon for family support.

Utility Allowance. This term is used in Part 913 in the determination of the amount a family pays for its housing expenses to refer to an amount that would cover reasonable consumption of utilities when it pays directly for its utilities. However, the proposed definition is taken not from § 913.102, but from § 965.473, which discusses the level of utility consumption a family is allowed when it does not pay directly for utilities, but the IHA furnishes them and charges families for excess usage, based on a checkmeter system. This definition encompasses both tenant-purchased and IHA-furnished utilities and refers to the section of this proposed rule when the method of determining the amount is prescribed.

Utility Reimbursement. This term from § 913.102 has been revised to reflect the change in the definition of utility allowance.

A few new definitions are added to this section: Operating Subsidy, Shared Housing, and Tenant-Purchased Utilities.

Types of Lower Income Housing Projects—§ 905.105.

This is virtually identical to the current § 905.103, stating that projects may be rental or homeownership. However, it omits equipment as a contribution that can be made by a Mutual Help homebuyer, and it adds a paragraph (c) concerning the Turnkey III Homeownership Opportunities Program (formerly in a separate part).

Assistance from IHS and BIA—§ 905.110

This is a shortened version of the current § 905.104, which provides for coordination of projects developed for IHAs of Federally recognized tribes in accordance with the Interdepartmental Agreement.

Applicability of Civil Rights Statutes—§ 905.115

This section is virtually identical to the current § 905.105, which provides that with respect to IHAs created under tribal law exercising powers of self-government, the Indian Civil Rights Act assures equal protection and that other IHAs may be governed by the Civil Rights Acts of 1964 and 1968.

Contracting Preferences—§ 905.120

This section is based on § 905.106 of a final rule implementing the Indian Self-Determination and Education Act published on December 4, 1986 (51 FR 43734).

Compliance with Other Federal Requirements—§ 905.125

This section follows § 905.107 of the current rule, with the addition of a reference to the Rehabilitation Act of 1973.

Establishment of IHAs—§§ 905.130, 905.135

Sections 905.108 and 905.109 have been reorganized and revised in §§ 905.130 and 905.135, so that each section pertains to one method of establishing an IHA—either under State law or by tribal ordinance. Consequently, cross-references to these separate sections identify the authority for the creation of a particular IHA.

Tenants or Homebuyers as IHA Commissioners—§ 905.140

This section contains only minor editorial changes from the current § 905.110 to make it gender neutral.

Administrative Capability—§ 905.145

This section has been added to reflect the fact that the Department has developed an assessment mechanism to assist it to determine whether, in major areas of IHA administration, an IHA maintains "administrative capability", *i.e.*, the capability to provide adequate administration in compliance with all HUD requirements for proposed and existing projects, without an unreasonable need for continuing HUD oversight. Adequate capability must be demonstrated by an IHA to be eligible for approval of additional program funds. Various thresholds of performance will be used to determine eligibility for awards or for authority to certify compliance with program requirements. The assessment will also be used to determine what IHAs need special technical assistance to improve performance.

Subpart B—Indian Housing Development

This subpart has been completely reorganized and rewritten with some major changes to reflect current administrative philosophy. In keeping with the commitment to remove obstacles to Indian self-government, the proposed rule provides new opportunities for Indians to take increasing responsibility for administering their housing programs, and provides flexibility to accommodate various levels of administrative capability, as described above. The rule has been updated to incorporate provisions required by recent legislation and eliminate provisions which are no longer needed. In addition, the rule has been simplified and organized into a logical sequence of progressive topics which basically parallel processing stages. The Department desires to reduce processing and development time by streamlining the program and reducing unnecessary regulations.

Many paragraphs have been rewritten to allow additional IHA responsibility or flexibility. In some paragraphs, the requirements have been rewritten for clarity but remain essentially the same in substance. The Department estimates that if all the potential opportunities were afforded an Indian Housing Authority to administer the program without HUD involvement and these revised procedures were used, the processing time from program reservation to construction start could be cut by approximately six months. In addition, HUD staff time could be saved, and therefore used for other key functions, such as providing technical assistance to troubled IHAs, monitoring IHA performance, or training IHA staff.

Subpart B—Development

New Sec.		Old Sec.
905.201	Roles and Responsibilities of Federal Agencies	905.202
905.205	Allocation	905.205
905.210	Development Priorities (New, based on sec. 6(h)-(j), 1937 Act)	
905.215	Production Methods and Requirements	905.203
905.220	Application Procedures	905.206
905.225	IHA Development Program	New
905.230	Indian Preference (as amended in FR-1808)	905.204
905.235	IHS Contracts in Connection With Development	905.211
905.240	Site Selection Criteria	905.216
905.245	Types of Interest in Land	905.218
905.250	Appraisals	905.219
905.255	Site Approval	905.217
905.260	Design Criteria	905.212 and 905.215
905.265	Total Development Cost Standard	905.213 905.214
905.270	Construction and Inspections	905.221
905.275	Warranty Inspections and Enforcement	905.222
905.280	Correcting Deficiencies	905.223

More Opportunities for Direct Program Responsibility

The revised rule creates opportunities for IHAs to administer the program with a minimum of HUD involvement. If HUD determines that an IHA has superior administrative capability (see § 905.145), HUD may authorize the IHA to complete a particular task and submit any resulting documents to HUD along with a certification that all program requirements have been met. HUD will be required to accept the certification from an authorized IHA without further review or approval. This type of procedure has been established for obtaining IHA development contracts for personal services (§ 905.235), the completion of final site approval conditions (§ 905.255), preparing working drawings and specifications (§ 905.270) (a), (b) and (c)), and completing final inspection matters (§ 905.270(f)(3)). In addition, the revised rule emphasizes the IHA's lead role in the selection of a development method (§ 905.210), and house design (§ 905.250).

Flexibility

The proposed rule provides flexibility in program administration which will accommodate the diversity among tribes and the right of each tribe to set its own priorities and goals.

Roles of Federal Agencies–§ 905.201

This section repeats the substance of the current § 905.202. It omits language stating that HUD will not fund development items or services that either the BIA or IHA is obligated to provide under the Interdepartmental Agreement, to permit flexible arrangements to be worked out by the agencies regarding funding on individual projects.

Allocation—§ 905.205.

Funds are being allocated to Indian field offices based on need and capability.

Development Priorities—§ 905.210

This new section is based on sections (6)(h), 6(i) and (6)(j) of the 1937 Act, enacted by the Housing and Urban-Rural Recovery Act of 1983. This section provides that projects use the acquisition method rather than new construction unless it can be shown that new construction is less costly. However, new construction may be justified if there is a lack of suitable housing to acquire. We anticipate that on many Indian reservations there will be a lack of suitable existing housing, and new construction will be justified. The rule also provides that priority will be given to development of units to serve large families.

Production Methods—§ 905.215

The production methods in § 905.215 have been reduced from the five in current § 905.203, to four: conventional construction, turnkey, acquisition of existing units, or force account construction. The turnkey method described in the rule covers both the basic turnkey method and the type now called modified (or staged) turnkey. The latter type is used when a project is to be delivered in stages instead of as a completed entirety. The Department encourages the use of the force account method of construction, *i.e.*, use of IHA employees to perform the work, where the IHA has the capacity. However, to prevent abuse, this section requires an IHA to provide assurances of capability (including financial capability) to obtain HUD-approval.

This section of the proposed rule eliminates reference to the applicability of the Davis-Bacon Act to wage rates under the force account method, because § 905.125(c) makes clear that the Davis-Bacon Act applies to all laborers and mechanics employed in the development of a project.

This section provides that the IHA selects the method of development, but HUD must approve it. If HUD does initially disapprove the IHA's chosen method, it will state the reasons and give the IHA an opportunity to provide additional support or argument in favor of its chosen method.

Application Procedures—§ 905.220

The program reservation requirements stated in § 905.220 of this proposed rule contain a significant change from current § 905.206, intended to provide flexibility for IHAs. The number of units to be developed will be stated as a minimum, and the IHA will be free to exceed that number as long as the amount reserved is not exceeded. If the IHA chooses to exceed the minimum number of units, it must provide written assurance of its financial resources to meet possible higher costs. The Department believes that unit flexibility will provide an incentive for IHAs to develop more units within the available funds.

The proposed rule also eliminates the content of current § 905.209 on preliminary loans. Section 905.220(c) of the revision proposes executing the Annual Contribution Contract (ACC) immediately after issuing the program reservation. Planning funds could be reimbursed under the ACC after issuance of the program reservation. Elimination of the preliminary loan reflects an overall change of the program from a loan program to a grant program, in accordance with the changes in the Department's appropriations since Federal Fiscal Year 1986. The amount approved for preliminary planning, referenced in § 905.260(c), is limited to 3 percent of the overall development cost. Controls will be maintained over the amount of funds disbursed by strengthening the budget review process in the Field Office. Further guidance will be placed in the program handbook. Any changes to the ACC required by will be placed in the program handbook. Any changes to the ACC required by project planning can be made by amendment before starting construction. We are interested in comments regarding the feasibility of this approach.

The proposed rule eliminates discussion of OMB Circular A-95, which pertained to review of Federal projects by areawide clearinghouses, since that circular has been superseded by Executive Order 12372, which does not cover Indian tribes. The proposed rule also eliminates reference to an appeal procedure if the application is disapproved or is approved for fewer units than proposed.

IHA Development Program—§ 905.225

This section (which is new) describes the step that follows program reservation and precedes final planning activities: IHA submission of a project proposal and HUD review and disposition of the proposal. It requires that the IHA submit the project proposal within one year of program reservation and that HUD review the proposal promptly. If the IHA fails to submit a proposal within the one-year period (unless extenuating circumstances exist), or the proposal is not accepted, the program reservation is recaptured.

Indian Preference—§ 905.230

This section corresponds to § 905.204 of the current rule, as adopted in a final rule published on December 4, 1986 (51 FR 43734), with minor corrections.

IHA Development Contracts—§ 905.235

The general prohibition in the current § 905.211 on IHA's entering into contracts for development without HUD approval is retained. However, a new paragraph is added stating that HUD may give blanket authority to certain IHAs to contract without HUD approval, in which cases HUD will require the IHAs to certify that the contracts satisfy all HUD requirements. HUD may at any time revoke this authority. A proposed rule dealing with the issue of preemption of State or tribal prevailing wage requirements was published on October 21, 1987 (52 FR 39233). This proposed rule does not include its provisions, but the final rule developed on that topic will be incorporated into the final Indian Housing consolidated rule in this and other appropriate sections.

Site Selection Criteria—§ 905.240

The current § 905.216 has been revised to require that site selections be consistent with the goal of cost containment. The proposed site selection criteria do not require a site feasibility study if the topography causes the suitability of a site to be called into question.

Types of Interest in Land—§ 905.245

The definitions of "trust or restricted land," "tribal land," and "individually owned land," are omitted in favor of a cross-reference to 25 CFR 151.2, the source used for the definitions provided in § 905.218 of the current rule.

Appraisals—§ 905.250

Appraisals will be required for sites regardless of whether the value exceeds $750 per unit, consistent with private market practice.

Site Approval—§ 905.255

It is possible under this rule to have a one-stage site approval process, to speed development. If there are some problems with the site, conditional approval may be given, to be followed by a second step of final approval. Additional detail will be provided in the program handbook.

A paragraph has been added to indicate that HUD may authorize certain IHAs to approve sites that have obtained HUD conditional approval as satisfying the requirements for final approval.

Design Criteria—§ 905.260

The Department is committed to a policy of containing program costs. In the past, increases in project reservations were granted to accommodate higher-than-expected design or construction costs. The proposed regulation requires in §§ 905.220 and 905.260 that the IHA manage the design of a project so that the reserved amount is not exceeded. The final rule will contain the cost containment guidelines that are the subject of a separate rulemaking (See 52 FR 4284, 4349; February 11, 1987.) Within the allowable cost, however, this section now allows an IHA greater freedom to accommodate local design preferences and amenities, including alternate heating and energy sources. Requirements concerning good design and quality of architecture, and consideration of climatic conditions are eliminated from this section (which corresponds to §§ 905.212 and 905.215 of the current rule). HUD review of the plans will be limited to review for compliance with applicable codes and the ability to build within the allowable cost. The requirement that the IHA submit a basic outline of the prototype house for the project, with alternate interior and exterior variations has also been omitted. These deletions are being made to eliminate unnecessary detail.

This section carries out this Administration's intent to affirm the right of IHAs to determine the best way to meet their needs. We are particularly interested in comments regarding the feasibility of this approach to design flexibility and cost containment.

Total Development Cost Standard—§ 905.265

The provision in current § 905.213 for establishment of separate prototype costs for an Indian area if costs in that area are significantly different from costs in adjacent areas, has been changed to provide that in all cases there will be different cost standards for Indian areas. The current rule says that published prototype costs are based on a prototype design. Since § 905.260 of the new rule does not mention a prototype design, it is not referenced in this section. Also dropped is reference to publication of the Indian area cost standards, which is specified in current § 905.213.

Off-site water and sewer facilities are not required to be funded within the allowable development cost standard. Since this type of cost is beyond the normal development cost of public housing, it is not required to be funded as part of the basic cost. Separate appropriations are made available to cover these costs. This existing policy is stated explicitly in the proposed rule.

Construction and Inspections—§ 905.270

This section of the proposed rule corresponds to § 905.221 of the current rule. The regulation provides HUD flexibility to use agents rather than staff in its monitoring responsibilities. The word "monitoring" in § 905.270 was

specifically chosen to describe HUD's role. Many IHAs believe HUD inspects a project to assure it is being constructed properly. The wording of § 905.270 clearly sets forth the IHA's responsibility for providing inspections during construction and HUD's role of monitoring the IHA's contract administration.

Paragraphs (a), (b), and (c) of this section require final planning and commencement of construction to start within one year of HUD approval of the development program. Failure to meet this schedule will result in termination of the ACC and recapture of the funds, unless exceptional circumstances exist. These paragraphs also provide that HUD may give certain IHAs blanket authority to certify proper preparation of plans and specifications and proceed to bids and construction without HUD review.

The detailed discussion of submission of inspection reports to HUD and site visits has been shortened in paragraph (e) to provide that HUD representatives visit construction sites to evaluate the IHA's construction administration.

The language concerning the inspection on completion (paragraph (f)) is virtually the same as in the current rule, except that there is a provision for HUD to authorize certain IHAs to certify completion and release to the contractor of any amounts withheld. A new paragraph (g) is added to provide that HUD will monitor an IHA's performance to certify adherence to certain program requirements (instead of waiting for HUD review and approval) and may revoke or condition this authority.

Interagency and Tribal Coordination—Appendix I (Current)

The Interdepartmental Agreement, which currently appears as Appendix I to Subpart B, is referenced in the revision, but the text has been deleted. It was felt that the Agreement could be updated more easily if it were not subject to the regulation revision and publication process.

Some language about interagency and tribal coordination (current §§ 905.202, 905.208 and 905.214(d)) was removed, but § 905.201 references coordination of functions by the agencies, and other sections (e.g., § 905.235) retain references to necessary approvals by other agencies. Material about processing steps, previously found in § 905.206, will be discussed in the program handbook.

Subpart C—Operation

This subpart describes the requirements under which an IHA administers its Indian housing program after the end of the initial operating period. In keeping with the Department's intent to provide a complete compilation of the regulations in Chapter IX pertaining to Indian housing, this subpart incorporates Parts 912, 913, 960, and portions of Part 965. Most of the original sections have been retained, but certain sections have been expanded, as needed, to incorporate a new material. The provisions of Part 913 imposing restrictions on the number of applicants in the 50–80% of median area income that may be admitted is omitted because section 103 of the Housing and Community Development Act of 1987, Pub. L. 100–242, approved February 5, 1988, exempts Indian Housing Authorities from the statutory limit on admission of this income group. A primary objective of this revision is to simplify the program and provide flexibility to accommodate the wide range of capacities of IHAs to manage their own housing programs.

Subpart C—Operations

New		Old
Sec. 905.301	Admission Policies	Sec. 905.302, 912.3, 912.4, 960.205, 960.207
905.310	Restriction Against Ineligible Aliens	912.5 thru 912.7
905.315	Determination of Rents and Homebuyer Payments	905.304, 913.108, 913.109
905.320	Annual Income	913.106
905.325	Total Tenant Payment	913.107
905.330	Mutual Help Required Monthly Payment	905.416
905.335	Rent and Homebuyer Payment Collection Policy	905.305
905.340	Grievance Procedures and Leases	Part 966, 905.303
905.345	Maintenance and Improvements	905.306
905.350	Procurement and Administration of Supplies, Materials and Equipment	905.307
905.355	Contracts for Personal Services and Repairs	905.310
905.360	Correction of Management Deficiencies	905.308
905.365	Tenant Participation and Management	964.21, 964.33, 968.4

Admission Policies—§ 905.301

The section on admission policies has been written to incorporate provisions from Parts 960, 912, 913, and the Housing and Urban-Rural Recovery Act of 1983 (HURRA). The material on tenant/homebuyer selection criteria was taken from Part 960. The paragraph on keeping pets was inserted to implement section 227 of HURRA. The admission of singles rule was taken from Part 912, and requirements raising the percentage of income paid for "rent" and on admitting the very low-income were taken from Part 913.

More specifically, this section includes in paragraph (a) the content of paragraph (b) of the current § 905.302. It adds two provisions. The first is a new goal of the IHA's admission regulations: the denial of admission to applicants whose habits and practices reasonably may be expected to be detrimental. The second addition is a requirement that the IHA's regulations provide procedures governing transfers between units, between programs, and any other IHA priorities. Paragraph (b) corresponds to paragraph (a) of the current § 905.302.

Paragraph (c) is a much abbreviated version of the current § 960.205, which prescribes standards for the IHA's tenant selection criteria and guidance on how to develop the criteria and how to apply them. HUD approval of the criteria is now required. However, the guidance has been removed as unnecessary.

Pet ownership is the subject of paragraph (d). A statutory provision requires owners and managers of federally assisted housing programs to permit applicants and tenants in housing for the elderly or handicapped to have common household pets live in the dwelling. A final rule has been published implementing that provision (December 1, 1986, 51 FR 43270). This paragraph simplifies the final rule as applied to IHAs by eliminating the lengthy guidance for IHAs that might want to regulate pets in any projects for the elderly or handicapped, in favor of providing such guidance to interested IHAs on request.

Paragraph (e) is modeled on the current § 912.3, concerning admission of single persons. It would revise the current requirements for project-by-project HUD approval of IHA requests for occupancy by single persons, and would establish instead certification requirements for IHA compliance with the 15 percent single person occupancy limitation, and reporting requirements for a higher occupancy limit (up to 30 percent of the units). Since this topic is now the subject of a draft proposed rule, the eventual content of this section will reflect the comments received on that proposed rule, as well as comments on this rule.

The material concerning verification procedures and notification to

applicants of admissions decisions that is now found in §§ 960.206 and 960.207 is basically repeated in paragraph (f) of this proposed § 905.301. Suggestions about verification methods found in paragraphs (b) and (c) of the current § 960.206 have been removed as unnecessary.

Prohibition on Housing Assistance to Ineligible Aliens—§ 905.310

Section 214 of the Housing and Community Development Act of 1980, as amended by section 329 of the Housing and Community Development Amendments of 1981 (42 U.S.C. 1436a), section 121 of the Immigration and Control Act of 1986, and section 164 of the Housing and Community Development Act of 1987, prohibits making assistance under the United States Housing Act of 1937 ("Act") available for the benefit of ineligible aliens. A proposed rule to implement section 214 is expected to be published soon. The content of § 905.310 of this rule will reflect any rule published by the Department on this subject.

Rents and Homebuyer Payments—§ 905.315

The section on determining rents and homebuyer payments and reexamination of income is based on §§ 905.304, 913.108 and 913.109. It clarifies current policy with respect to utility reimbursements. In the rental and Turnkey III programs, if the utility allowance for tenant-paid utilities exceeds the family's required monthly payment (based on its income), a reimbursement is paid to the family to cover the difference. This practice is not applicable to the Mutual Help Program, where the family must pay the IHA, at a minimum, an amount that covers the administration charge—in addition to furnishing its own utilities.

Annual Income—§ 905.320

Income limits for admission, rental payments, and homebuyer payments are based on annual income.

The definition of annual income tracks the current language of § 913.106 except for minor modifications to bring it in line with § 813.106, which has been clarified to exclude explicitly the income of a person living in the household of an elderly family who is necessary to the care or well-being of a family member.

Total Tenant Payment—§ 905.325

Section 913.107 of the current rule specifies the calculations used to determine the monthly rental payment or the homebuyer monthly payment, except for Mutual Help. Paragraph (a) of this section corresponds to paragraph (a) of § 913.107, basing the amount on a percentage of income, in most cases. Paragraphs (b) and (c) of § 913.107 are obsolete now and, therefore, are not repeated here. Paragraph (b) of the proposed section corresponds to a combination of §§ 960.208 and 913.108 on utility reimbursements.

Mutual Help Required Monthly Payments—§ 905.330

This section specifies how the required monthly payment for Mutual Help homebuyers is to be calculated. (It is different from the payment in the rental and Turnkey III homeownership programs because the 1937 Act permits a difference, in recognition of the original Mutual Help contribution made by a homebuyer.)

This section combines the content of §§ 905.416 and 905.419. Section 905.419 provides for a payment schedule to be based on a percentage of the family's adjusted income, with a minimum required payment set at the administration charge. The administration charge is a per unit monthly amount required to operate the project, which covers the IHA's per unit overhead, insurance attributable to the unit, and a reasonable amount to cover routine maintenance needs for the unit (expected to be in the vicinity of $35 per unit).

Grievance Procedures and Leases—§ 905.340

The recent statutory requirements for IHA grievance procedures and leases have been incorporated into the proposed revision in § 905.340. No final rule has been published to implement the statute. This proposed language basically tracks the statute itself (section 6(k) of the 1937 Act). The Department is interested in comment on the appropriate way to implement the statutory requirements in accordance with tribal or State and local law and practices in Indian areas.

Procurement and Contracting—§§ 905.350 and 905.355

Paragraphs (a) and (b) of § 905.350 correspond to § 905.307 of the current rule on procurement for everything but services, with no change. Paragraph (c) corresponds to § 905.309, a reference to Indian preference in contracting. Paragraph (d) is a much abbreviated version of § 965.601 on the Consolidated Supply Program. Contracting for services is covered by the new § 905.355. (But see § 905.235(c) regarding procurement related to project development.) In the final rule, the Department plans to elaborate on the methods of providing Indian preference in the purchase of equipment, supplies and materials of relatively low cost.

In keeping with the intent of providing IHAs with additional responsibility to manage their own programs, a provision has been added in § 905.355 (corresponding to § 968.12 of the current rule), which will allow qualified IHAs to contract for services without HUD approval. The HUD field office will use its administrative capability assessment to determine if an IHA is qualified to perform this function, and it will authorize qualified IHAs to perform the work. The IHA shall certify that the contract has been obtained in accordance with all program requirements.

Tenant Participation and Management—§ 905.365

It is HUD's policy to encourage tenant participation in the management of Indian housing. The extent and form of tenant participation are local decisions to be made by an IHA after consultation with its tenants. This section is a much-abbreviated version of Part 964, which applies to the public housing program. The difference is dictated by the differences between typical projects in Indian housing from public housing. Most Indian housing projects consist of detached single family homes, whereas most public housing projects consist of apartment buildings, which are more susceptible to tenant organizing and management. It is also HUD's policy to encourage tenant management where it is feasible. Guidelines for Indian housing tenant management will be provided in the Indian housing handbook.

Operating Subsidy

The paragraphs on operating subsidy that were formerly in Subpart C have been placed elsewhere. The rules for operating subsidy for the rental program are now in Subpart H. The rules for the MH program have been placed in Subpart D at § 905.445, and the rules for the Turnkey III program are in Subpart E at § 905.523.

Subpart D—Mutual Help (MH) Homeownership Program

In changing this subpart, the intent was to simplify the regulation and prescribe features that foster a greater sense of ownership for MH families. The Department believes too many unprepared homebuyers have entered the program, resulting in increased accounts receivable and deferred maintenance on the homes. The changes will make the program available only to families who could be expected to

continue their responsibilities as homebuyers due to their resources or level of income.

Provisions of this Subpart and Subpart E concerning successor rights (§§ 905.470 and 905.509(g)) differ in several respects. We invite comment on whether these subparts should be made more alike in this respect and, if so, which provisions are preferable.

The revised sections correspond to the current sections as shown in the following chart, and as further described below:

Subpart D—Mutual Help Homeownership Opportunity Program

New section		Old section
905.401	Applicability and Scope	905.401
905.405	Program Framework	905.403, 905.405, 905.427
905.410	Special Provisions for Development of a MH Project	905.404, 905.413, 905.414
905.415	Selection of MH Homebuyers	905.406, 905.407
905.420	MH Contribution	905.408, 905.409
905.425	Commencement of Occupancy	905.415
905.430	Inspections, Responsibility for Items Covered by Warranty	905.417
905.435	Maintenance, Utilities, and Use of Home	905.418
905.440	Operating Reserve	905.420
905.445	Operating Subsidy	905.311
905.450	Homebuyer Accounts	905.421
905.455	Purchase of Home	905.422
905.460	IHA Homeownership Financing	905.423
905.465	Termination of MHO Agreement	905.424
905.470	Succession Upon Death, Mental Incapacity or Abandonment	905.425
905.475	Miscellaneous	905.426, 905.429
905.480	Conversion of Existing Mutual Help Projects	905.428
905.485	Conversion of Rental Projects	New.

Program Framework—§ 905.405

This section combines the content of current §§ 905.403, 905.405 and 905.427. It omits the provisions of § 905.405(b) and (c), which provide for IHAs to borrow both from HUD and from other sources, because borrowing from HUD is no longer the primary method of HUD funding: capital grants are the new method.

Mutual Help Project Development—§ 905.410

All references to percentages and component costs have been eliminated. It is felt that limitations of this nature were not in keeping with the objective of allowing IHAs more responsibility to manage their own programs. As long as an IHA remains within the reserved amount, we believe there is no need for limits on individual components. Descriptive and unnecessary material in the section on financing and contractor approval of homebuyers performing mutual help labor has been eliminated. Other changes in the sections regarding development make these sections conform to Subpart B.

Selection of Homebuyers—§ 905.415

As with the section on tenant selection for rental projects, § 905.301, advisory language on the specifics of selection of homebuyers has been removed from this version of the counterpart in the current rules, § 905.406. However, the waiting list must be maintained in accordance with HUD requirements.

Mutual Help Contribution—§ 905.420

Several sections concerning MH contribution have been condensed into this one section. Some of the differences from the current rule are that the exact amount of the Mutual Help Contribution is to be $1500, and no homebuyer can be credited with a higher contribution. The current rule requires a project average of $1500 per unit but allows variations among homebuyers. This rule would permit a contributed homesite to be valued at as much as $1500, if the appraisal showed a market value that high. However, this rule would permit land as an MH contribution only if the land is owned in fee simple or is assigned or allotted to the homebuyer. Cash would be permitted as the MH contribution only to the extent it is used by the contractor for the purchase of land, labor or materials for the homebuyer's unit.

Maintenance, Utilities and Use of Home—§ 905.435

A reference to the requirement in § 905.345(d) for annual IHA inspections of the home has been added to the provision of this section dealing with the homebuyer's maintenance responsibilities. The provision on use of the home have been deleted in favor of a reference to using the home in accordance with the Mutual Help and Occupancy Agreement.

Operating Subsidy—§ 905.445

Since collection losses are a justifiable basis for paying operating subsidy, IHAs are required under paragraph (b)(2) to make all reasonable efforts to collect charges from a vacated homebuyer, including litigation, and amounts collected are to be repaid to HUD when collected.

Homebuyer Accounts—§ 905.450

For homebuyers entering this program after the effective date of a final rule, this rule would provide for setting up an equity account credited with the amount of the MH contribution. This account will receive any excess in homebuyer payments above the administration charge, and any voluntary payments that a homebuyer wishes to make. The other account to be established is a nonroutine maintenance account, to be funded by a portion of the administration charge paid by the homebuyer. The two accounts replace the current Monthly Equity Payments Account (MEPA) and Voluntary Equity Payments Account (VEPA) and refundable and nonrefundable reserves.

Purchase of Home—§ 905.455

The only change in the content of this proposed section from that of the current § 905.422 is the removal of some details of the terms of financing an IHA would provide under § 905.460 if the IHA eventually financed the purchase. These terms are found in § 905.460, and this section now references that section for these details.

IHA Homeownership Financing—§ 905.460

The 25-year term of financing currently found only in the counterpart of § 905.455 has been moved here, as has the method of determining the loan rate. Paragraph (e) of the current § 905.423, concerning IHA regulations on occupancy, care and use of the home, is omitted from this section because that topic is covered in § 905.435. The MHO Agreement is to be the primary source of determining a homebuyer's responsibilities on these matters, as provided in § 905.435(c).

Termination of MHO Agreement—§ 905.465

This section omits specific requirements for the content of a notice of termination, as found in the current § 905.424(b), in favor of a reference to the terms of the MHO Agreement for termination as well as to the Indian Civil Rights Act and applicable tribal, State, and local laws. It does still require, however, that a homebuyer be provided a fair and reasonable opportunity to have a response heard and considered by the IHA.

Miscellaneous—§ 905.475

Unnecessary verbiage has been eliminated from the provision concerning counseling, currently found in § 905.429, to provide additional room for local interpretation.

Conversion of Existing MH Projects—§ 905.480

Currently, there are two types of MH projects—"existing" (with ACCs executed before March 9, 1976 and not yet converted to "new") and "new" (with ACCs executed on or after March 9, 1976). The Department proposes to encourage all of these projects to convert to the version described in this new subpart, with the two homebuyer accounts, as soon as the agreement of homebuyers is obtained. This will simplify recordkeeping and monitoring for IHAs who now may have as many programs to administer as four: rental, Turnkey III, Old Mutual Help and New Mutual Help. This provision encourages merger of all Mutual Help into one program, and Subpart E encourages conversion of all Turnkey III units to the Mutual Help program. The overall result of these conversions would be one homeownership program and one rental program.

These conversion provisions are a much abbreviated version of the current § 905.428, with references to the new equity and nonroutine maintenance accounts substituted for the MH reserves and "MEPA" counterparts used in the current rule.

Conversion of Rental Projects—§ 905.485

In response to the requests of many IHAs, a new provision is being added which will allow an IHA to apply to convert units in an existing rental project to MH. An application and HUD Indian field office review are required to determine if there are sufficient qualified potential homebuyers, conversion is financially feasible, and the IHA is capable of administering the new project. If approved, the project would be converted using all the applicable provisions in § 905.480.

Subpart E—Turnkey III Program

For Indian Housing Authorities, this subpart would supersede the Department's regulations at Part 904 for the development and operation of Turnkey III projects. It establishes the essential elements for the operation of the Turnkey III Homeownership Opportunity Program and deletes obsolete and unnecessary materials. For the first time, separate regulations will exist for Turnkey III Projects operated by IHAs as distinguished from those operated by non-Indian PHAs.

IHAs operate only a small number of Turnkey III projects (approximately 2,000 units). This is a complex program with separate regulatory requirements, which include, among other things, the maintenance of separate books of accounts. IHAs and HUD field offices have reported the program to be administratively burdensome. As a result, it may be beneficial for some IHAs to consider the conversion of some or all of their Turnkey III units (vacant or occupied) to some other form of operation (e.g., the Mutual Help program or the conventional rental program), with the consent of current Turnkey III program participants.

The Department believes that some homebuyers may be better served by transferring to one of the other HUD-assisted Indian housing programs. Homebuyers that are in compliance with their homebuyers agreements may remain in the Turnkey III Program; purchase their units, if financially able to do so; or transfer to the Mutual Help program or the conventional rental program. Lower income homebuyers who have lost homeownership potential must be reevaluated and, if the family does not regain potential within a reasonable time period, transferred to the conventional rental program. (Of course, the Homeownership Agreements of homebuyers who fail to make their monthly payments or otherwise breach those agreements are still subject to simple termination.)

The revised rule establishes several new provisions covering such topics as conversion of Turnkey III projects and transfer of Turnkey III homebuyers to some other form of occupancy; clarification of Homebuyer Ownership Opportunity Agreements; and the use of operating subsidy for Turnkey III projects. The latter provides that operating subsidy may not be used to pay homebuyer accounts.

Subpart F—Lead-Based Paint Poisoning Prevention

This subpart incorporates the content of the currently effective final rule for the public and Indian housing programs. Revisions to that rule have been proposed, to implement changes made by section 566 of the Housing and Community Development Act of 1987, 53 FR 11164 (April 5, 1988). The final rule in this rulemaking will incorporate the content of the final rule in that rulemaking.

The sections otherwise correspond as follows:

Subpart F—Lead-Based Paint Poisoning Prevention

New		Old
Sec.		Sec.
905.551	Purpose and Applicability	965.701
905.555	Notification	965.703
905.560	Maintenance Obligation; Defective Paint Surfaces	965.704
905.565	Procedures Involving EBLs	965.705
905.570	Testing and Abatement Applicable to Modernization	968.9
905.575	Compliance with Tribal, State and Local Laws	965.706
905.580	Monitoring and Enforcement	965.707

Other references to lead-based paint poisoning prevention are found in §§ 905.125, 905.605 (g) and (h), and 905.610(g), (h) and (i).

Subpart G—Comprehensive Improvement Assistance Program

This subpart incorporates the regulations from Part 968 virtually intact. The Department solicits comment on the appropriateness for Indian housing of this statutorily designed program. The section of the proposed rule and the sections of the current rule to which they correspond are as follows:

Subpart G—Comprehensive Improvement Assistant Program

New		Old
Sec.		Sec.
905.601	Purpose and Applicability	968.1, 968.2,
905.605	Eligible Costs	968.4
905.610	Procedures for Obtaining Approval of a Modernization Program	968.5
905.615	Modernization Project	968.6
905.620	Tenant Participation	968.7
905.625	Homebuyer Participation	968.8
905.630	Special Requirements for Homeownership Projects	968.10
905.635	Special Requirements for Section 23 Leased Housing Bond Financed Projects	968.11
905.640	Contracting Requirements	968.12, 968.9 (h)(3)
905.645	Modernization Financing	968.13
905.650	Progress Reporting	968.14
905.655	Budget Revisions	968.15
905.660	On-Site Inspections	968.16
905.665	Fiscal Closeout of a Modernization Program	968.17
905.670	Modernization and Energy Conservation Standards	968.18

Subpart H—Performance Funding System for Operating Subsidy for Indian Housing Rental Programs

This subpart incorporates Part 990, implementing a performance funding system for allocating annual contributions for operating subsidy in accordance with section 9(a) of the 1937 Act.

The section of the proposed rule and the sections of the current rule to which they correspond are as follows:

Subpart H—Annual Contributions for Operating Subsidy

New		Old
Sec.		Sec.
905.701	Purpose and Applicability	990.101, 990.103
905.705	Determination of Amount of Operating Subsidy Under P.F.S.	990.104
905.710	Computation of Allowable Expense Level	990.105
905.715	Computation of Utilities Expense Level	990.107
905.720	Other Costs	990.108
905.725	Projected Operating Income Level	990.109
905.730	Adjustments	990.110
905.735	Transition Funding for Excessive High-Cost IHAs	990.106
905.740	Operating Reserves	990.111
905.745	Operating Budget Submission and Approval	990.112
905.750	Payment Procedure for Operating Subsidy Under PFS	990.113
905.755	Payments of Operating Subsidy Conditioned Upon Reexamination of Income of Families in Occupancy	990.115
905.760	Determining Actual Occupancy Percentage	990.117
905.765	Comprehensive Occupancy Plan Requirements	990.118

Subpart I—Energy Consumption and Utilities Management

This subpart will eventually incorporate the rules from Part 965, Subpart C on energy conservation, and Subpart D on individual metering. Since these subparts are the subject of a pending rule, the sections are being reserved which will reflect the pending rulemaking. Material on utility allowances, corresponding to Part 965, Subpart E, is stated here in a § 905.885. The provision concerning surcharges for excess utility consumption is also under review. The final rule in this rulemaking will follow any changes made as a result of that review. The following chart shows which sections of the current rule correspond to the sections of the new rule.

Subpart I—Energy Audits, Conservation Measures and Utility Allowances

New		Old
Sec.		Sec.
905.801	Purpose and Applicability	965.301, 965.302
905.805–905.880	Reserved	Parts 965, Subparts C and D
905.885	Utility Allowances	965.470–965.479

Subpart J—Operation of Projects After Initial ACC Term

This subpart contains the provisions of Part 969 that have current application. Part 969 implements section 211(a), the Housing and Community Development Amendments of 1979, which amended section 9(a) of the 1937 Act. That part required that Annual Contributions Contracts (ACCs) between HUD and PHA/IHAs be amended to require that projects continue to be operated as lower income housing for at least 10 years after the completion of debt-service ACC payments, and that decisions to dispose of or demolish projects that were the subject of an ACC be approved by HUD during that period. Because of the conversion of these programs from loan programs to grant programs and the accompanying forgiveness of outstanding debt, the content of Part 969 is being revised to refer to the period after expiration of the initial ACC term instead of the post-debt service period. (The initial ACC period may extend beyond the debt service period if the debt is forgiven.)

The following chart shows what sections of the current rule correspond to the new sections.

Subpart J—Operation of Projects After Initial ACC Term

New		Old
Sec.		Sec.
905.901	Purpose and Applicability	969.101
905.903	Continuing Eligibility for Operating Subsidy; ACC Extension	969.104, 969.105
905.905	ACC Extension in Absence of Current Operating Subsidy	969.106
905.907	HUD Approval of Disposition or Demolition	969.107
905.910	Policy and Standards for HUD Approval of Disposition/Demolition	970.4

Subpart K—Disposition or Demolition of Buildings

This subpart basically repeats the current content of Part 970. The new sections correspond to the old as indicated on this chart.

New		Old
Sec.		Sec.
905.921	Purpose and Applicability	970.1, 970.2
905.923	General Requirements for HUD Approval of Disposition/Demolition	970.4
905.925	Relocation of Displaced Tenants	970.5
905.927	Specific Criteria for Disposition Requests	970.7
905.929	Specific Criteria for Demolition Requests	970.6
905.931	IHA Application for HUD Approval	970.8
905.933	Use of Proceeds	970.9, 970.10
905.935	Reports and Records	970.11

Subpart L—Miscellaneous

The only provision in this subpart is the waiver provisions currently found in § 999.101, incorporated in this part as § 905.999. The outdated provision in paragraph (b) of § 999.101 about redelegating authority has been eliminated.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The rule was listed as sequence number 1027 under the Office of Public and Indian Housing in the Department's Semiannual Regulatory Agenda published on April 25, 1988 (53 FR 13854, 13891), under Executive Order 12291 and the Regulatory Flexibility Act.

Initial Regulatory Flexibility Analysis

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby believes that this rule may have a significant impact on a substantial number of small entities, *i.e.*, small Indian Housing Authorities (IHAs), since most IHAs have jurisdiction over areas containing fewer than 50,000 persons. This rule primarily consolidates

current rules applicable to IHAs into one part, so its impact is somewhat limited. The changes from current rule provisions that are proposed are all designed to decrease "red-tape" and increase flexibility for IHAs, and therefore should be beneficial. Typical of these changes are provisions permitting qualified IHAs to certify compliance with HUD requirements for a certain step in the development or modernization process, instead of waiting for HUD's compliance review. About 15 to 20 percent of the IHAs will qualify to use this certification process. Other changes are intended to tailor the program from one geared to multifamily housing projects in urban areas to one geared to single family homes on remote Indian reservations. The rules that would otherwise govern IHAs on all these matters (found in Chapter IX) will be revised in the final rule to eliminate references to IHAs, so that this consolidated part will be the authoritative reference point for rules affecting IHAs. The recordkeeping and reporting requirements in this proposed rule are no more onerous than the ones in currently applicable rules, and in some cases they are less burdensome Comment is specifically solicited on what recordkeeping and reporting requirements could be reduced or eliminated.

The Catalog of Domestic Assistance numbers for the programs affected by this rule are 14.146, 14.147 and 15.141.

Information collections contained in this rule are identical to or less burdensome than ones contained in the counterparts that currently cover Indian housing authorities and public housing agencies. The approval numbers assigned by the Office of Management and Budget appear in the text of this rule, except for the provisions of §§ 905.465(g), 905.503(d), for which OMB approval is pending. The OMB control numbers for these sections will appear in the final rule.

List of Subjects in 24 CFR Part 905

Grant programs: Indians, Low and moderate income housing, Homeownership, Public housing.

Accordingly, Part 905 of Title 24 of the Code of Federal Regulations is revised to read as follows:

PART 905—INDIAN HOUSING PROGRAMS

Subpart A—General

Sec.

Subpart B—Development

Subpart C—Operation

Subpart D—Mutual Help Homeownership Opportunity Program

Subpart E—Turnkey III Program

Subpart F—Lead-Based Paint Poisoning Prevention

Subpart G—Comprehensive Improvement Assistance Program

Authority: Secs. 3, 4, 5, 6, 9, 11, 12, 13, 14, 16, and 18, United States Housing Act of 1937 (42 U.S.C. 1437a, *et seq.*); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 905.101 Applicability and scope.

(a) Under the United States Housing Act of 1937, the U.S. Department of Housing and Urban Development (HUD) provides financial and technical assistance to public housing agencies, including Indian Housing Authorities (IHAs), for the development and operation of lower income housing projects. This part is applicable to such projects developed or operated by an IHA in an Indian area, as defined in § 905.102.

(b) If assistance under this part is not available to a lower income Indian family because the family desires housing in an area within which no IHA is authorized to provide housing, or if for any other reason an Indian family desires housing assistance other than under this part, a family may seek housing assistance under other HUD programs.

(c) The provisions of this part are a complete statement of HUD regulations affecting the development and operation of lower income housing by IHAs except as supplemented by parts in other chapters of this title, which are referenced in this part.

§ 905.102 Definitions.

ACC Expiration Date (§ 969.103). The last day of the term during which a particular Indian housing project is subject to all or any of the provisions of the ACC.

Act (§ 905.102). The United States Housing Act of 1937 (42 U.S.C. 1437–1440).

Adjusted Income (§ 913.102). Annual income less the following allowances, determined in accordance with HUD instructions:

(a) $480 for each dependent;

(b) $400 for any elderly family;

(c) For any family that is not an elderly family but has a handicapped or disabled member other than the head of household or spouse, handicapped assistance expenses in excess of three percent of annual income, but this allowance may not exceed the employment income received by family members who are 18 years of age or older as a result of the assistance to the handicapped or disabled person;

(d) For any elderly family:

(1) That has no handicapped assistance expenses (as defined in this section), an allowance for medical expenses (as defined in this section) equal to the amount by which the medical expenses exceed three percent of annual income;

(2) That has handicapped assistance expenses greater than or equal to three percent of annual income, an allowance for handicapped assistance expenses computed in accordance with paragraph (c) of this section, plus an allowance for medical expenses that is equal to the family's medical expenses;

(3) That has handicapped assistance expenses that are less than three percent of annual income, an allowance for combined handicapped assistance expenses and medical expenses that is equal to the amount by which the sum of these expenses exceeds three percent of annual income; and

(e) Child care expenses, as defined in this section.

Administration Charge (§ 905.419). In Mutual Help projects, the amount budgeted per-unit per-month for operating expense, exclusive of the cost of HUD-approved expenditures for which operating subsidy is being provided in accordance § 905.455.

Administrative Capability (§ 905.207). An IHA's capability to administer programs in compliance with the Act and all applicable HUD requirements. (See § 905.145.)

Allowable Expense Level (§ 990.102). In rental projects, the per-unit per-month dollar amount of expenses (excluding utilities and expenses allowed under § 905.720) computed in accordance with § 905.725, which is used to compute the amount of operating subsidy.

Allowable Utilities Consumption Level (AUCL) (§ 990.102). In rental projects, the amount of utilities expected to be consumed per-unit per-month by the IHA during the requested budget year, which is equal to the average amount consumed per-unit per-month during the rolling base period. After the end of the requested budget year, the AUCL of the utility(ies) used for space heating will be adjusted by a change factor, which is defined in this section.

Annual Contributions Contract (ACC) (§ 905.102). A contract under the Act between HUD and the IHA containing the terms and conditions under which the Department assists the IHA in providing decent, safe, and sanitary housing for lower income families. The Contract must be in a form prescribed by HUD under which HUD agrees to provide assistance in the development, modernization and/or operation of a lower income housing project under the Act, and the IHA agrees to develop, modernize and operate the project in compliance with all provisions of the contract and the Act, and all HUD regulations and implementing requirements and procedures.

Annual Income (§ 913.106). See § 904.320.

Applicable surface (§ 965.702). All exterior surfaces of a residential structure, up to five feet from the floor or ground, such as a wall, stairs, deck, porch, railing, window, or doors, which are readily accessible to children under

seven years of age and all interior surfaces of a residential structure.

Approved Certifying Organization (§ 967.302). Any organization(s) or entity(ies) approved by HUD, under § 905.145, which will administer a program for certifying of IHA housing managers under this part.

Assisted Dwelling Unit (§ 912.2). A dwelling unit assisted under the programs covered by this Part 905.

Base Year (§ 990.102). The IHA's fiscal year immediately preceding its first fiscal year under PFS.

Base-Year Expense Level (§ 990.102). The expense level (excluding utilities, audits, and certain other items) for the year, computed as provided in § 905.710(a).

BIA (§ 905.102). The Bureau of Indian Affairs in the Department of the Interior.

Change Factor (§ 990.102). The ratio of the affected IHA fiscal year heating degree days (HDD) divided by the average annual HDD of the rolling base period. (Affected year HDD divided by rolling base period average HDD).

Checkmeter (§§ 965.472 and 965.402). A device for measuring utility consumption of each individual dwelling unit where the utility service is supplied through a mastermeter system. The IHA pays the utility supplier on the basis of the mastermeter system. The IHA pays the utility supplier on the basis of the mastermeter readings and uses the checkmeter to determine whether and to what extent utility consumption of each dwelling unit is in excess of the allowances for IHA-furnished utilities, established in accordance with Subpart I.

Chewable Surface (§ 965.702). All chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, *e.g.*, protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.

Child Care Expenses (§ 913.102). Amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to be gainfully employed or to further his or her education only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care, and, in the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of income received from such employment.

Common Property (§ 904.102). The non-dwelling structures and equipment, common areas, community facilities, and in some cases certain component parts of dwelling structures, which are contained in the development.

Comprehensive Modernization (§ 968.3). A modernization program for a project which provides for all needed physical and management improvements. Under the Comprehensive Improvement Assistance Program (CIAP), all modernization programs are comprehensive modernization, except those defined as special purpose, emergency or homeownership.

Construction Contract (§ 905.102). The contract for construction in the case of the conventional method, or the contract of sale in the case of the Turnkey method.

Current Budget Year (§ 990.102). The IHA fiscal year in which the IHA is operating.

Defective Lead-Based Paint Surface (§ 965.702). Paint on applicable surfaces having a lead content of greater than or equal to 1 mg/cm^2, that is cracking, scaling, chipping, peeling, or loose.

Defective Paint Surface (§ 965.702). Paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

Demolition (§ 970.3). The razing in whole, or in part, of one or more permanent buildings of an Indian housing project.

Dependent (§ 913.102). A member of the family household (excluding foster children) other than the family head or spouse, who is under 18 years of age or is a disabled person or handicapped person, or is a full-time student.

Deprogramming (§ 990.102). Removal from the IHA's inventory under the ACC, pursuant to the IHA's formal request and HUD's approval, of a dwelling unit no longer used for dwelling purposes or a nondwelling structure or a unit used for nondwelling purposes that the IHA has determined will no longer be used for IHA purposes.

Development (§ 904.102). The entire undertaking, including all real and personal property, funds and reserves, rights, interests, obligations and activities related thereto.

Disabled Person (§ 913.102). A person under a disability, as defined in section 223 of the Social Security Act (42 U.S.C. 423) or in section 102 of the Developmental Disabilities Services and Facilities Construction Amendments of 1970 (42 U.S.C. 2691(*l*)).

Displaced Person (§ 912.2). A person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized under Federal disaster relief laws.

Disposition (§ 970.3). The conveyance or other transfer by the IHA, by sale or other transaction, of any interest in the real estate of an Indian housing project, but does not cover transfers of property described in § 905.921(b)(1)–(b)(5).

Earned Home Payments Account (EHPA). In the Turnkey III program (Subpart E), this account is established and maintained as described in § 905.517.

Elderly Family (§§ 912.2, 913.102). A family whose head or spouse (or sole member) is an elderly, disabled, or handicapped person, as defined in this section. It may include two or more elderly, disabled or handicapped persons living together, or one or more of these persons living with one or more live-in aides, as defined in this section.

Elderly Person (§ 913.102). A person who is at least 62 years of age.

Elevated Blood Lead Level or EBL (§ 965.702). Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 μg/dl (micrograms of lead per deciliter of whole blood) or greater.

Emergency Modernization (§ 968.3). A modernization program for a project which is limited to physical work items of an emergency nature, affecting the life, health and safety of tenants or related to fire safety. Under emergency modernization, management improvements are not eligible modernization costs.

Equity Account (§ 904.110). The Homebuyer's Equity Account established and maintained pursuant to § 905.450 in the Mutual Help Program after the effective date of this rule.

Family (§ 912.2). Family includes but is not limited to (a) an elderly family or single person as defined in this part, (b) the remaining member of a tenant family, and (c) a displaced person.

Family Project (§ 965.702). Any project assisted under the U.S. Housing Act of 1937 (other than section 8 or 17 of the Act) which is not a project for the elderly or handicapped, as defined in this section.

Financial Feasibility (§ 968.3). With respect to modernization, the cost (excluding the cost of management improvements) of the modernization program does not exceed 62.5 percent (for a nonelevator structure) or 69 percent (for an elevator structure) of the total development cost standard of a new project with the same structure type, number and size of units and in the market area.

Force Account Labor (§ 968.3). Labor directly employed by the IHA on either a permanent or a temporary basis.

Formula (§ 990.102). The revised formula derived from the actual expenses of the sample group of PHAs which is used in PFS, as provided for in § 905.735, to determine the formula expense level and the range of each IHA. HUD plans to update the formula each year to reflect actual costs experienced by the sample group of PHAs.

Formula Expense Level (§ 990.102). The per-unit per-month dollar amount of expenses (excluding utilities and audits) computed under the formula, in accordance with § 905.710.

Full-Time Student (§ 913.102). A person who is carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

Handicapped Assistance Expenses (§ 913.102). Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a handicapped or disabled family member and that are necessary to enable a family member (including the handicapped or disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

Handicapped Person (§§ 912.2, 913.102). A person having a physical or mental impairment that (a) is expected to be of long-continued and indefinite duration, (b) substantially impedes his or her ability to live independently, and (c) is of such a nature that such ability could be improved by more suitable housing conditions.

Heating Degree Days (HDD) (§ 990.102). The annual arithmetic sum of the positive differences (those under 65 degrees) of the average of the lowest and highest daily outside temperature in degrees Farenheit, subtracted from 65 degree days Farenheit.

Home (§ 905.102). A dwelling unit covered by a homebuyer agreement.

Homebuyer (§§ 904.102, 905.102). The member or members of a lower income family who have executed a homebuyer agreement with the IHA and who have not yet achieved homeownership.

Homebuyer Agreement (§ 968.3). A Mutual Help and Occupancy Agreement or a Turnkey III Homebuyer's Ownership Opportunity Agreement.

Homeowner (§§ 904.102, 905.102). A former homebuyer who has achieved ownership of his or her home and acquired title to the home.

Homeownership Modernization (§ 968.3). A modernization program for a project that is under the Turnkey III Homeownership Opportunity Program or the Mutual Help Homeownership Opportunity Program. Under homeownership modernization, limited physical improvements are eligible modernization costs, but management improvements are not eligible modernization costs.

Housing Manager (§ 967.302). Any person who, irrespective of title, is responsible for the management and operation of lower income housing subject to this part. This person may be the Executive Director, Assistant Executive Director, or staff of an IHA.

HUD (§ 905.102). The Department of Housing and Urban Development, including the field offices that have been delegated authority under the Act to perform functions pertaining to this part for the area in which the IHA is located.

HUD Field Office (§ 905.102). The HUD Offices in Chicago, Oklahoma City, Denver, Phoenix, Seattle, and Anchorage, which have been delegated authority to administer programs under the United States Housing Act of 1937 for the area in which the IHA is located.

IHA (§ 905.102). An Indian Housing Authority.

IHA Homeownership Financing (§ 905.102). IHA financing for purchase of a home by an eligible homebuyer who gives the IHA a promissory note and mortgage for the balance of the purchase price.

IHA Project Proposal (§ 941.103). A statement of the basic elements of a project, including the estimated total development cost of the project, as adopted by the IHA and approved by HUD.

IHS (§ 905.102). The Indian Health Service in the Department of Health and Human Services.

Indian (§ 905.102). Any person recognized as being an Indian or Alaska Native by a tribe, the Federal government, or any State.

Indian Area (§ 905.102). The area of operation within which an IHA is authorized to operate pursuant to tribal or State law. The area of operation must consist of defined geographic boundaries, serve a pre-existing community of Indian families, and serve an area that is not served by the operation of another housing authority, unless the other authority gives its consent to such operation.

Indian Housing Authority (§ 905.102). A public housing agency established for an Indian area by exercise of a tribe's powers of self-government independent of State law, or by operation of State law authorizing the creation of housing authorities.

Interdepartmental Agreement (§ 905.102). The agreement among HUD, the Department of Health and Human Services, and the Department of Interior concerning assistance to projects developed and operated under the Act.

Lead-Based Paint (§ 965.702). A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1.0 mg/cm^2.

Live-in Aide. A person who resides with an elderly, disabled, or handicapped person or persons and who (a) is determined by the IHA to be essential to the care and well-being of the person(s); (b) is not obligated for support of the person(s); and (c) would not be living in the unit except to provide necessary supportive services. (See § 905.320 for treatment of a live-in aide's income.)

Lower Income Family (§ 913.102). A family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for an Indian area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually higher or low family incomes.

Local Inflation Factor (§ 990.102). The weighted average percentage increase in local government wages and salaries for the area in which the IHA is located and non-wage expenses based upon the implicit price deflator for State and local government purchases of goods and services. This weighted average percentage will be supplied by HUD. HUD anticipates that it will update the local inflation factor each year.

Mastermeter System (§§ 965.402, 965.472). A utility distribution system in which an IHA is supplied utility service by a utility supplier through a meter or meters and the IHA then distributes the utility to its tenants.

Medical Expenses (§ 913.102). Those medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.

MH (§ 905.102). Mutual Help.

MH Construction Contract (§ 905.102). A construction contract for an MH project, which shall be on a form prescribed by HUD.

MH Contribution (§ 905.102). A contribution of land, labor, or materials toward the development cost of a project in accordance with a homebuyer's MHO Agreement, credit for

which is to be used toward purchase of a home.

MHO Agreement (§ 905.102). A Mutual Help and Occupancy Agreement between an IHA and a homebuyer.

MH Program (§ 905.102). The MH Homeownership Opportunity Program.

Modernization Funds (§ 968.3). Funds derived from an allocation of budget authority for the purpose of funding physical and management improvements under an approved modernization program.

Modernization Program (§ 968.3). An IHA's program for carrying out modernization, as set forth in the proposed or approved final application for modernization funds. See Subpart G.

Modernization Project (§ 968.3). The improvement of one or more existing Indian housing projects, under a new project number designated for modernization purposes.

Monthly Adjusted Income (§ 913.102). One twelfth of adjusted income.

Monthly Income (§ 913.102). One twelfth of annual income.

Net Family Assets (§ 913.102). Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles are excluded, and, in the case of a family in which any member is actively engaged in a business or farming operation, the assets that are a part of the business or farming operation are excluded. In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust, but any income distributed from the trust fund shall be counted when determining annual income. In determining net family assets, IHAs shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

Nonroutine Maintenance (§§ 904.111, 968.3).

(a) For purposes of the Turnkey III Program (Nonroutine Maintenance Reserve) and the Mutual Help Program (Nonroutine Maintenance Account), nonroutine maintenance refers to infrequent and costly items of maintenance and replacement, including dwelling equipment such as a range or refrigerator, or major components such as heating or plumbing systems or a roof. Specifically excluded are maintenance expenses attributable to homebuyer negligence or to defective materials or workmanship.

(b) For purposes of CIAP/Modernization Program funding eligibility and applicability of wage rates, nonroutine maintenance refers to work items that ordinarily would be performed on a regular basis in the course of upkeep of a property, but have become substantial in scope because they have been put off, and that involve expenditures that would otherwise materially distort the level trend of maintenance expenses. Replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind does qualify, but reconstruction, substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units does not qualify.

NRMA (New). The nonroutine maintenance account in the Mutual Help Program established and maintained in accordance with § 905.450.

NRMR (§ 904.102(j)). The nonroutine maintenance reserve account in the Turnkey III Program established and maintained in accordance with § 905.519.

Other Income (§ 990.102). Income to the IHA other than dwelling rental income and income from investments, except that, for purposes of determining operating subsidy eligibility, the following items are excluded: Grants and gifts for operations, other than for utility expenses, received from Federal, State, and local governments, individuals or private organizations; amounts charged to tenants for repairs for which the IHA incurs an offsetting expense; and legal fees in connection with eviction proceedings, when those fees are lawfully charged to tenants.

Operating Budget (§ 990.102). The IHA's operating budget (HUD form 52564) and all related documents, required by HUD to be submitted pursuant to the ACC.

Operating Subsidy (New). Annual contributions for IHA operations made by HUD under the authority of section 9 of the Act. See Subpart H of this part with respect to rental projects. See also § 905.455 (Mutual Help Operating Subsidy) and § 905.523 (Turnkey III Operating Subsidy).

Performance Funding System (PFS). (New). The standards, policies and procedures established by HUD for determining the amount of operating subsidy a PHA is eligible to receive for its owned rental projects, based on the costs of operating a comparable well-managed project.

Program Reservation (§ 905.102). A written notification by HUD to an IHA, which is not a legal obligation, but which expresses HUD's determination, subject to fulfillment by an IHA of all legal and administrative requirements within a stated time, that HUD will enter into a new or amended ACC covering the stated number of housing units, or such other number as is consistent with funding reserved by HUD for the project.

Project. A development project under an ACC which has a unique project number.

Project for the elderly or handicapped. (§ 942.3). Any project assisted under the Act (other than under section 17 of the Act), including any building within a mixed-use project, that was designated for occupancy by the elderly or handicapped at its inception or, although not so designated, for which the IHA gives preference in tenant selection (with HUD approval) for all units in the project (or in the building, in a mixed-use project) to elderly or handicapped families. This term does not apply to projects assisted under the Mutual Help Homeownership Opportunity Program or the Turnkey III Homeownership Opportunity Program.

Project Units (§ 990.102). All dwelling units of an IHA's projects.

Projected Operating Income Level (§ 990.102). The per unit per month dollar amount of dwelling rental income plus nondwelling income, computed as provided in § 905.725.

Requested Budget Year (§ 990.102). The budget year (fiscal year) of an IHA following the current budget year.

Retail Service (§ 965.402). Purchase of utility service by IHA tenants directly from the utility supplier.

Rolling Base Period (§ 990.102). The 36-month period that ends 12 months before the beginning of the IHA requested budget year, which is used to determine the allowable utilities consumption level used to compute the utilities expense level.

Single Person (§ 912.2). A person who lives alone or intends to live alone, and who does not qualify as (a) an elderly family, (b) a displaced person (as defined in this section), or (c) the remaining member of a tenant family.

Special Purpose Modernization (§ 968.3). A modernization program for a project that is limited to cost-effective energy conservation work items which will not be adversely affected by any subsequent comprehensive modernization. For such projects, management improvements are not eligible modernization costs

Subsequent Homebuyer (§ 905.422(c)(1)). Any homebuyer other than the homebuyer who first occupies a home pursuant to an MHO agreement.

Successor homebuyer (§ 905.425). A person eligible to become a homebuyer who has been designated by a current homebuyer to succeed to an interest under a homeownership agreement in the event of the current homebuyer's death or mental incapacity, or abandonment of the home.

Surcharge (§ 965.472). The amount charged by the IHA to a tenant, in addition to the Tenant Rent, for consumption of utilities in excess of the allowance for IHA-furnished utilities or for estimated consumption attributable to tenant-owned major appliances or to optional functions of IHA-furnished equipment. Surcharges calculated pursuant to Subpart H, based on estimated consumption where checkmeters have not been installed, are referred to as "scheduled surcharges."

Tenant-Purchased Utilities (New). Utilities purchased by the tenant directly from a utility supplier.

Tenant Rent (§ 913.102). The amount payable monthly by the family as rent to the IHA. Where all utilities (except telephone) and other essential housing services are supplied by the IHA, tenant rent equals total tenant payment. Where some or all utilities (except telephone) and other essential housing services are not supplied by the IHA and the cost thereof is not included in the amount paid as rent, tenant rent equals total tenant payment less the utilities allowance.

Total Development Cost (§ 905.102). The sum of all HUD-approved costs for a project including all undertakings necessary for planning, site acquisition, demolition, construction or equipment and financing (including the payment of carrying charges) and for otherwise carrying out the development of the project. Offsite water and sewer facilities development costs are not included.

Total Tenant Payment (§ 913.102). The monthly amount calculated under Subpart C of this chapter. Total tenant payment does not include any surcharge for excess utility consumption or other miscellaneous charges (see Subpart I).

Tribe (§ 905.102). An Indian tribe, band, pueblo, group or community of American Indians or Alaska Natives.

Unit Months Available (§ 990.102). Project units miltiplied by the number of months the project units are expected to be available for occupancy during a given IHA fiscal year. Except as provided in the following sentence, for purposes of this part, a unit is considered available for occupancy from the date on which the end of the initial operating period for the project is established until the time it is approved by HUD for deprogramming and is vacated or approved for nondwelling use. On or after July 1, 1991, a unit is not considered available for occupancy in any IHA Requested Budget Year if the unit is located in a vacant building in a project that HUD has determined is nonviable.

Utilities (§ 905.472). Electricity, gas, heating fuel, water, sewerage service, septic tank pumping/maintenance, sewer system hookup charges (after development), and trash and garbage collection. Telephone service is not included as a utility.

Utilities Expense Level (§ 990.102). The per-unit per-month dollar amount of utilities expense used in calculation of operating subsidy, as provided in § 905.715.

Utility Allowance (§ 965.740). An allowance for IHA-furnished utilities represents the maximum consumption units (*e.g.*, kilowatt hours of electricity), established in accordance with § 905.810, that may be used by a dwelling unit without a surcharge against the tenant for excess consumption. An allowance for tenant-purchased utilities is a fixed dollar amount, established in accordance with § 905.885, that is deducted from the total tenant payment otherwise chargeable to a tenant who has retail service, whether the charges are more or less than the amounts of the allowance.

Utility Reimbursement (§ 913.102). The amount, if any, by which the utility allowance for tenant-purchased utilities for the unit, if applicable, exceeds the family's total tenant payment.

Very Low-Income Family (§ 913.102). A lower income family whose annual income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50 percent of the median income for an Indian area on the basis of its finding that such variations are necessary because of unusually high or low family incomes.

Welfare Assistance (§ 913.102). Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State of local governments.

Work Item (§ 968.3). Any separately identifiable unit of work constituting a part of a modernization program.

§ 905.105 Types of lower income housing projects.

IHAs may develop the following types of projects:

(a) *Rental.* In a rental project, the occupants lease units for an initial term of one year, followed by a month-to-month tenancy. Projects may be developed with single family detached, duplex, row house, walk-up, garden type, or elevator structures. Projects for the elderly and the handicapped may include congregate housing.

(b) *Mutual Help Homeownership Opportunity.* This program (see Subpart D) is available only for use by IHAs eligible for assistance under this part.

(1) Under this program, a homebuyer makes an MH contribution, makes required monthly payments and provides all maintenance of the home during the period of the MHO agreement, in return for the option to purchase the home.

(2) In return, the initial purchase price of the home is reduced each month in accordance with a predetermined purchase price schedule, and the homebuyer is given the option to buy the home by payment of the remaining balance of the purchase price at the time of the purchase.

§ 905.110 Assistance from Indian Health Service and Bureau of Indian Affairs.

Because HUD asssitance under this part is not limited to IHAs of federally recognized tribes, provisions in this part relating to assistance from BIA or IHS, or to required approvals, actions or determinations by these agencies in connection with such assistance, are applicable only to projects undertaken by IHAs of federally recognized tribes. These projects shall be developed and operated in accordance with the provisions of the Interdepartmental Agreement. "Federally recognized tribe" means a tribe recognized as eligible for services from BIA or IHS.

§ 905.113 Applicability of civil rights statutes.

(a) *Indian Civil Rights Act.* (1) The Indian Civil Rights Act (Title II of the

Civil Rights Act of 1968, 25 U.S.C. 1301–1303) provides, among other things, that "no Indian tribe in exercising powers of self-government shall * * * deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law." The Indian Civil Rights Act (ICRA) applies to any tribe, band, or other group of Indians subject to the jurisdiction of the United States in the exercise of recognized powers of self-government. The ICRA is applicable in cases where an IHA has been established by exercise of tribal powers of selfgovernment.

(2) In the case of IHAs established pursuant to State law, determinations by HUD of the applicability of the ICRA on a case basis may consider such factors as the existence of recognized powers of self-government; the scope and jurisdiction of such powers; and the applicability of such powers to the area of operation of a particular IHA. Generally, determinations by HUD of the existence of recognized powers of self-government and the jurisdiction of such powers will be made in consultation with the Department of Interior-Bureau of Indian Affairs, and may consider applicable legislation, treaties and judicial decisions. The area of operation of an IHA may be determined by the jurisdiction of the governing body creating the IHA, any limitations within the enabling legislation, and judicial decisions.

(3) Projects of IHAs subject to the ICRA shall be developed and operated in compliance with its provisions and all HUD requirements thereunder.

(b) *Title VI and Title VIII.* Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and Title VIII of the Civil Rights Act of 1968 as amended (42 U.S.C. 3601–3631), which prohibits discrimination based on race, color, religion, sex or national origin in the sale or rental of housing do not apply to IHAs established by exercise of a tribe's powers of self-government. HUD regulations implementing Title VI and Title VIII shall not be applicable to development or operation of projects by such IHAs. Any determination by HUD of the applicability of Title VI and Title VIII on a case basis shall consider the applicability of the Indian Civil Rights Act under paragraph (a) of this section.

(c) For discussion of laws dealing with discrimination on the basis of handicap and with construction accessibility requirements, see § 905.125(f).

§ 905.120 Preferences, opportunities, and nondiscrimination in employment and contracting.

(a) *Indian Self-Determination and Education Assistance (preference for Indians).* HUD has determined that Projects under this part are subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that any contract or subcontract entered into for the benefit of Indians shall require that, to the greatest extent feasible—

(1) Preferences and opportunities for training and employment in connection with the administration of such contracts or subcontracts be given to "Indians". That Act defines "Indians" to mean persons who are members of an Indian tribe, and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(2) Preference in the award of contracts or subcontracts in connection with the administration of contracts be given to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452). That Act defines "economic enterprise" to mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that the Indian ownership must constitute not less than 51 percent of the enterprise; "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body; "Indian" to mean any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act; and Indian "tribe" to mean any Indian tribe, band, group, pueblo, or community including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

(3) The following language shall be included in any contracts or subcontracts in connection with development or operation of IHA Projects:

Section 7(b) Clause

(i) The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises.

(ii) The parties to this contract shall comply with the provisions of said Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) and all HUD requirements adopted pursuant section 7(b).

(iii) In connection with this contract, the parties shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned Economic Enterprises, and preferences and opportunities for training and employment to Indians.

(iv) This section 7(b) clause shall be incorporated into every subcontract in connection with the project.

(v) Upon a finding by the IHA or HUD that any party to this contract is in violation of the section 7(b) clause, said party shall at the direction of the IHA, take appropriate action pursuant to the contract.

(b) *Executive Order 11246 (equal employment opportunity).* (1) Contracts for construction work in connection with Projects under this part are subject to E.O. 11246 (30 FR 12319), as amended by E.O. 12319, as amended by E.O. 11375 (32 FR 14303), and applicable implementing regulations (24 CFR Part 130; 41 CFR Chapter 60), rules, and orders of HUD and the Office of Federal Contract Compliance Programs of the Department of Labor. Executive Order 11246 prohibits discrimination and requires affirmative action to ensure that employees or applicants for employment are treated without regard to their race, color, religion, sex, or national origin.

(2) Compliance with E.O. 11246, and related regulations, orders and requirements shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act.

(c) *IHA's own employment practices.* Each IHA shall adopt and promulgate regulations with respect to the IHA's own employment practices which shall be in compliance with its obligations under section 7(b) of the Indian Self-Determination and Education Assistance Act, and E.O. 11246, where applicable. A copy of these regulations shall be posted in the IHA office, and a

copy shall be submitted to HUD promptly after adoption by the IHA. (Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), as amended, which prohibits discrimination in employment by making it unlawful for employers to engage in certain discriminatory practices, excludes Indian tribes from the nondiscrimination requirements of Title VII.)

§ 905.125 Compliance with other Federal requirements.

(a) *Environmental Clearance.* Before approving a proposed project, HUD will comply with the requirements of 24 CFR Part 50.

(b) *Flood Insurance.* HUD will not approve for acquisition, construction, or improvement, a building located in an area that has been identified by the Federal Emergency Management Agency as having special flood hazards, unless the following conditions are met:

(1) Flood insurance on the building is obtained in compliance with Section 102(a) of the Flood Disaster Protection Act of 1973; and

(2) The community in which the area is situated is participating in the National Flood Insurance Program in accord with section 202(a) of the Act (42 U.S.C. 4012(a) and 4106(a)).

(c) *Wage Rates for Laborers and Mechanics.* (1) With respect to construction work on a project, including a modernization project (except for nonroutine maintenance work, as described in paragraph (b) of the definition in § 905.102), all laborers and mechanics employed by an IHA or its contractors shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a through 276c).

(2) With respect to all maintenance work on a project, including nonroutine maintenance work (as described in paragraph (b) of the definition in § 905.102) on a modernization project, all laborers and mechanics employed by an IHA or its contractors shall be paid not less than the wages prevailing in the locality as determined or adopted by HUD pursuant to section 12 of the United States Housing Act of 1937.

(d) *Professional and Technical Wage Rates.* All architects, technical engineers, draftsmen and technicians employed in the development of a project, shall be paid not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by HUD.

(e) *Relocation Assistance.* (1) When a project is developed by an IHA established in accordance with § 905.135, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("Uniform Act") (42 U.S.C. 4621–4638) does not apply, because such an IHA is not a "State agency" covered by the Uniform Act.

(2) When a project is developed by an IHA established in accordance with § 905.130, the project shall be developed in compliance with the Uniform Act and HUD policies and requirements thereunder (24 CFR Part 42).

(3) In the case of both paragraphs (e) (1) and (2) of this section, development cost may include the reasonable moving costs for a family which is moved from a project site during construction and is returned to the site after completion.

(f) *Handicap.* (1) Under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), HUD is required to assure that no otherwise-qualified handicapped person is excluded from participation, denied benefits, or discriminated against under any program or activity receiving Federal financial assistance, solely by reason of his or her handicap. Except for an IHA created by the exercise of a tribe's powers of self-government, IHAs must comply with implementing instructions in Part 8 of this Title 24.

(2) The IHA shall comply with the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157), and HUD implementing regulations (24 CFR Part 40).

(g) *Audits.* Under the Single Audit Act of 1984 (31 U.S.C. 7501–7507), all IHAs that receive assistance under this part must comply with the audit requirements of 24 CFR Part 44.

(h) *Lead Based Paint Poisoning Prevention.* See 24 CFR Part 35 and Subpart F of this part.

§ 905.130 Establishment of IHAs pursuant to State law.

An IHA may be established pursuant to a State law that provides for the establishment of IHAs with all necessary legal powers to carry out lower income housing projects for Indians.

§ 905.135 Establishment of IHAs by tribal ordinance.

(a) *Legal Capacity of Tribe to Establish IHA.* Where an Indian tribe has governmental police power to promote the general welfare, including the power to create a housing authority, an IHA may be established by tribal ordinance enacted by the governing body of the tribe.

(b) *Form of Ordinance.* A tribal ordinance establishing an Indian Housing Authority shall be in a form prescribed by HUD. No substantive change may be made in the form of tribal ordinance except with specific written approval from HUD.

(c) *Approval or Review of Ordinance by the Department of the Interior.* HUD shall not enter into an undertaking for assistance to an IHA formed by tribal ordinance unless such ordinance has been submitted to HUD, accompanied by evidence that the tribe's enactment of the ordinance either has been approved by the Department of the Interior or has been reviewed and not objected to by that Department.

(d) *Amendment of Ordinance.* Tribal ordinances not conforming to current HUD requirements shall be amended as promptly as possible. No contract or amendment providing any additional commitment for HUD financial assistance shall be entered into unless such conforming amendments have been enacted.

(e) *Submission to HUD of Documents Establishing IHA.* The tribal ordinance, evidence of Department of the Interior approval or review, and the following documentation relating to the initial organization of the IHA, in the form prescribed by HUD, shall be submitted to HUD before or with any application for financial assistance:

(1) Certificate of appointment of Commissioners;

(2) Commissioner's oath of office;

(3) Notice of organization;

(4) Consent to meeting;

(5) Minutes of meeting;

(6) Resolutions establishing the IHA, adopting the by-laws, adopting the seal, designating a regular place of meeting, and designating officers;

(7) By-Laws;

(8) Certificate of Secretary as to authenticity of documents; and

(9) General Certificate of Housing Authority.

§ 905.140 IHA Commissioners who are tenants or homebuyers.

(a) *Tenant or Homebuyer Commissioners.* No person shall be barred from serving on an IHA's Board of Commissioners because he or she is a tenant or homebuyer in a housing project of the IHA. A commissioner who is a tenant or homebuyer shall be entitled to participate fully in all meetings concerning matters that affect all of the tenants or homebuyers, even though such matters affect him or her as well. However, no such Commissioner shall be entitled or permitted to participate in or be present at any meeting (except in his or her capacity as a tenant or homebuyer), or be counted or treated as a member of the Board, concerning any matter involving his or

her individual rights, obligations, or status as a tenant or homebuyer.

(b) *Commissioner as IHA Employee.* A member of the IHA's Board of Commissioners shall not be eligible for employment by the IHA, except under unusual circumstances and with HUD approval.

§ 905.145 Administrative capability.

(a) An IHA must maintain the capability to provide adequate administration in compliance with all applicable HUD requirements during the term of the ACC.

(b) On the basis of regular monitoring, on-site reviews, audits and surveys, HUD will evaluate the administrative capability of each IHA at least annually to determine whether the IHA's administration of its programs is adequate and, if not, whether appropriate corrective action is being taken. HUD will advise the IHA of its determination.

(c) In determining an IHA's administrative capability, HUD will consider its compliance with HUD requirements in the areas of administration, development, financial management, occupancy, tenant accounts receivable, maintenance, utilities, modernization and operation of HUD assisted projects.

(d) An IHA will be determined to have adequate administrative capability when it rates an overall 70 percent in all areas combined.

(e) An application for program funds will not be approved unless HUD determines that the IHA has achieved, or will achieve within a reasonable time prescribed by HUD, adequate administrative capability.

(f) HUD may establish thresholds for superior capability for IHA awards, special initiatives, or participation in other program benefits, including but not limited to certification of its fulfillment of HUD requirements under § 905.235(b) (contracting), § 905.255(c) (site approvals), § 905.270(f)(3) (completion inspection), and § 905.355(a) (personal services contracts).

§ 905.150 Certification of housing managers.

(a) *Purpose and scope.* This section establishes a requirement for the certification of housing managers and provides for this certification by HUD-approved professional organizations or other entities. The requirements set forth in this subpart are applicable to all lower income housing projects assisted under the Act that are owned by IHAs and to all IHAs administering these projects.

(b) *Certification.* (1) Full Certification is granted a housing manager by an approved organization when the organization determines that the person has demonstrated the ability to achieve and/or maintain the essential social, fiscal, environmental, equal opportunity, and administrative goals of the Indian housing program established under the Act, the annual contributions contract, and HUD regulations for the management of Indian housing projects.

(2) Probationary certification is granted to a person who has not met the qualifications for full certification when hired, but who has the potential to qualify. The initial term of probationary certification is one year. The approved certifying organization may extend the term of the probationary certificate for one additional year in order to allow the applicant sufficient time to obtain a certificate. In no case may the probationary certificate be in effect for longer than two years.

(3) Before January 1, 1981, approved certifying organizations were permitted to issue a certification solely on the basis of satisfactory on-the-job performance in the housing management field for not less than 4 years. Certification on this basis is valid only if it was granted before that date.

(c) *HUD approval of certifying organizations.* (1) Any national housing management organization may apply to HUD for approval for the purpose of providing certification of individuals as housing managers. HUD's Certification Review Committee will evaluate applicant organizations upon their past performance in the field of housing management and compliance with HUD's nondiscrimination policies and the suitability of the programs submitted. Every applicant shall submit to HUD appropriate evidence that such organization:

(i) Has the experience and capacity to deal with lower income housing management processes with significant emphasis on housing projects assisted under the Act or assisted under other Federally or State-assisted programs;

(ii) Has developed a certification program which includes:

(A) Specific criteria and standards for qualifying for certification in accordance with paragraph (c)(6) of this section;

(B) Suitable procedures which will afford any person the opportunity to apply for certification and receive certification if he or she meets the standards;

(C) A right of appeal as set forth in paragraph (i) of this section; and

(D) Suitable procedures which provide for a probationary certificate.

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(2) The HUD Certification Review Committee shall evaluate the evidence submitted by the organization in accordance with paragraph (c)(1) of this section and will determine in its discretion, on the basis of that evidence and such other material as may be relevant, whether the qualifications of the organization meet the criteria set forth in paragraph (c)(1) of this section. If the qualifications are satisfactory, HUD shall notify the organization of its approval as a certifying organization.

(3) In the event HUD denies approval of the organization, the notification to the organization shall set forth the reasons for HUD's action in sufficient detail so as to enable the organization to request reconsideration of the determination.

(4) The standards, criteria and program for enabling persons to qualify for certification shall be subject to periodic review and reapproval or disapproval not less than annually by the HUD Certification Review Committee. Such periodic review shall include the procedures and methods by which the organization incorporates in its training, evaluation and certification program the current regulations, policies and procedures of HUD as well as due process protection for the persons certified or applying for certification.

(5) A current list of approved certifying organizations and their standards and criteria shall be published in the Federal Register as organizations are approved or reapproved by HUD as certifying organizations, and shall be sent to all IHAs in the form of a notice.

(6) All criteria and standards for qualifying for certification shall be reasonably related to job requirements. The assessment method used to determine whether an individual is qualified for certification (*e.g.*, written examination) shall be based on and relate to a valid analysis of the tasks performed by housing managers and shall be fair, objective, and free of ethnic and cultural bias. HUD approval of assessment methodolgy may be granted on the basis of a written statement by an organization or individual acceptable to HUD as being qualified in the field of assessment methodology.

(7)(i) Immediately upon receiving notification from HUD that its application to become an approved certifying organization has been approved, and no longer than 60 days following that notification, an approved

certifying organization may submit to HUD a list of all individuals who already possess a certification from the organization provided:

(A) The certification is reasonable evidence that the certificate holder is qualified as a housing manager, and

(B) The certification is currently recognized by the approved certifying organization at the time the list of names is tendered to HUD.

(ii) Upon receiving this list, HUD will notify the approved certifying organization that the certifications issued to the listed individuals may be considered as satisfying the certification requirements of this section.

(d) *Requirements for certification.* Any person employed as a housing manager of dwelling units shall be required to have certification as a housing manager (either full certification or probationary certification) from an approved certifying organization.

(e) *Salaries of housing managers.* Except as provided in paragraph (g) of this section, in budgets submitted by IHAs to HUD, beginning with the budget for the first fiscal year which starts at least four months after the date on which certification is required for any housing manager, the salary of such person, if certification has not been obtained, shall not be considered an eligible operating expenditure (whether or not operating subsidy is required) nor shall such salary be approved as a budget item for the purpose of operating subsidy eligibility; provided, however, that these prohibitions shall not apply during the pendency of an appeal filed pursuant to paragraph (i) of this section. Beginning with that same fiscal year and thereafter, the current certification status of all housing managers shall be submitted by IHAs to HUD along with the annual budget.

(f) *Compliance with civil service law and notice of termination procedures.* If a housing manager is denied certification or certification is suspended or withdrawn and the person no longer has any appeal pending under this part, the allowance of any salary as an approvable budget item shall terminate, except for such period as may necessarily be involved in compliance by the IHA with notice of termination and related procedures pursuant to State or Tribal law or the IHA's approved personnel practices. Nor shall the allowance of the salary as an approvable budget item terminate if it should be determined as a result of administrative and/or judicial proceedings that under applicable civil service or other State or Tribal laws that the official's services may not be legally terminated on grounds of his failure to obtain certification under this part.

(g) *Costs of certification and related training.* The reasonable costs incurred by an IHA for certification of an IHA employee as a housing manager (whether or not the certification is required under this part), including training to enable an IHA employee to qualify for such certification, shall be allowable as eligible expenditures for an IHA. The IHA may, at its discretion, including a provision for payment of such costs in its operating budget. However, such expenditures must be within existing operating subsidy availability under Subpart H, since no additional operating subsidy will be provided to cover them.

(h) *Denial, revocation or suspension of certification*—(1) *Grounds for denial, revocation or suspension of certification.* Pursuant to the procedures set forth in paragraph (b) of this section, certification may be denied, revoked or suspended by the approved certifying organization which granted the certification or by its successor, or if there be no successor, by HUD, for the following:

(i) Acts of fraud, deceit or misrepresentation in obtaining the certification;

(ii) Acts of gross negligence, incompetency or misconduct in carrying out the duties of housing manager;

(iii) Conviction of a crime involving moral turpitude; or

(iv) Willful disregard of the regulations and requirements applicable to the public housing program.

(2) *Notice by the approved certifying organization.* The approved certifying organization shall serve a written notice on the certified person that denial, revocation or suspension is being considered and shall set forth in the notice with reasonable specificity the reasons for the proposed action. Said notice shall also advise the certified person that he has a specified number of days from receipt of the notice to respond in writing or to request an informal hearing. If the certified person does not respond within the specified period, the approved certifying organization may revoke or suspend the certification and shall immediately so advise the certified person, the IHA and HUD.

(3) *Presentation of evidence by certified person and determination by the approved certifying organization.* The certified person may examine and, at his expense, copy all documents, records and regulations of the approved certifying organization that are relevant to the matter. The certified person shall have the right to present evidence and arguments in opposition to the proposed revocation or suspension and to controvert evidence relied on by the approved certifying organization and he or she may elect to do this in writing, or at the informal hearing, or both. Whenever a certified person requests an informal hearing, he or she shall be entitled to confront in a reasonable manner and cross-examine all witnesses on whose testimony or information the approved certifying organization relies. Evidence pertinent to the issues in the approved certifying organization's notice may be received and considered without regard to its admissibility under rules of evidence employed in judicial proceedings. Upon considering all evidence and arguments presented, the approved certifying organization shall determine whether certification should be revoked or suspended and shall promptly advise the certified persons of its determination. Testimony shall be recorded in some form and such records shall be maintained for a period of not less than 90 days. Whenever the approved certifying organization's decision is to revoke or suspend certification, the notice shall set forth with reasonable specificity the organization's findings. A decision to revoke or suspend certification shall not preclude the approved certifying organization from making subsequent determination that a certified person should be reinstated.

(4) Either the IHA or the housing manager may appeal the determination made by the approved certifying organization pursuant to this section, in accordance with paragraph (i) of this section.

(i) *Appeal.* (1) Any person required to hold certification as a housing manager and who is denied certification or whose certification has been revoked or suspended by an approved certifying organization may, at his or her option, file an appeal with the approved certifying organization.

(2) The appellant shall have the right to request a hearing. If a hearing is requested, it shall be one at which he or she is represented or accompanied by a person of his or her choice. The appellant shall be afforded an opportunity to present oral testimony and to cross-examine witnesses.

(3) The approved certifying organization shall consider the appeal on the record and on the basis of the evidence presented. The appellant and the person who originally denied certification shall have the right to add to the record affidavits, testimony, or relevant information in support of the certification or in support of the denial.

suspension, or revocation of certification. As promptly as possible (generally within 90 days from the filing date of the appeal), the approved certifying organization shall render the decision on the appeal which states the reasons for the decision. A copy of the decision shall be furnished to the appellant and to HUD.

(4) All materials filed or submitted in regard to an appeal under this section shall be maintained for not less than 90 days following the date of the decision and shall be available for public inspection to the full extent of the law.

Subpart B—Development

§ 905.201 Roles and responsibilities of Federal agencies.

HUD, IHS and BIA shall coordinate functions in accordance with the Interdepartmental Agreement, which is issued separately.

§ 905.205 Allocation.

HUD will allocate funds to Indian field offices using a systematic process to consider the relative need for housing in the Region, based on recent and reliable data, and on the capability of IHAs in the Region to develop and administer Indian housing in accordance with HUD requirements.

§ 905.210 Development priorities.

(a) HUD will execute an ACC for development of units only if the project involves acquisition of existing housing, unless the IHA demonstrates that the cost of new construction would be less than the cost of acquiring, or acquiring and rehabilitating, existing housing, including the reserve for major repairs in an acquired rental project. If the IHA certifies and demonstrates to HUD's satisfaction that there is insufficient existing housing stock to undertake the development of the project, the cost comparison would not be required.

(b) Among proposed development projects, HUD will give priority to projects consisting of housing suitable for large families (three or more bedrooms).

§ 905.215 Production methods and requirements.

(a) *Choice and approval of production method.* The IHA shall state on the application for a project its choice of one of the production methods described in this section and, if the method selected is force account, its justification in accordance with paragraph (a)(4) of this section. If HUD disapproves the IHA's preferred development method, it will furnish a statement of its reasons to the IHA.

(1) *Conventional method.* Under the Conventional method, the IHA plans the project and prepares drawings and specifications. After the plans and specifications are approved as required under § 905.270, the IHA solicits competitive bids through public advertisement and awards the contract to the lowest responsible bidder. The contractor shall be required to provide completion assurance in the form of a 100 percent performance and payment bond or other security as approved by HUD. The contractor receives progress payments during construction, and a final HUD-approved payment upon completion in accordance with the contract.

(2) *Turnkey method.* Under the Turnkey method, the IHA advertises for developers to submit proposals to build a project described in the IHA's invitation for proposals. The invitation for proposals may prescribe the sites to be used. The IHA evaluates the proposals and selects the best proposal—subject to HUD approval—after considering price, design, site, the developer's experience and other evidence of the developer's ability to complete the project. After HUD approval of the proposal selected by the IHA, the IHA may award the contract to the successful developer, who prepares working drawings and specifications unless previously provided by the IHA. The IHA and the developer enter into a contract of sale after the drawings and specifications are approved by HUD as required under § 905.270. Upon completion of the project (or stages thereof) in accordance with the contract of sale, the IHA purchases the project (or stage) from the developer. The IHA may contract for assistance in preparing the invitation and evaluating proposals. The IHA must obtain independent inspection services by an architect, engineer or other qualified person during construction. The IHA must require the developer to furnish completion assurance in the form of a 100 percent performance and payment bond, or other security as approved by HUD.

(3) *Acquisition of existing housing (with or without rehabilitation).* Under the Acquisition method, the IHA purchases existing housing that may need only minor repairs or that may require substantial rehabilitation. Repair or rehabilitation may be accomplished before acquisition using Turnkey procedures or after acquisition using Conventional or Force Account procedures.

(4) *Force account method.*

(i) Under the Force Account method, an IHA performs construction or rehabilitation using its own work force, either entirely or in combination with subcontractors. See § 905.270 concerning final working drawings.

(ii) The Force Account method may be used only if justified by the IHA and approved by HUD. The IHA must demonstrate that it has the technical and administrative capabilities to complete the project within the projected time and budget. The tribe must agree in writing to cover any costs in excess of the HUD-estimated construction costs; must demonstrate that it has the financial resources to meet the excess costs up to a specified amount; and must provide some form of security acceptable to HUD to cover excess costs.

(b) *Public advertisement.* Contracts for development of a project shall be awarded only after public advertisement for competitive bids or proposals. The advertisement shall inform all prospective bidders or proposers of any applicable HUD preference requirements for Indian contractors.

§ 905.220 Application procedures.

(a) *Submission to HUD.* An IHA may submit an application for a project after HUD issues a general notification that funds are available. The application shall be on the form prescribed by HUD and shall be accompanied by all the legal and administrative attachments required by the form. The application may include comments by the Chief Executive Officer on behalf of the unit of local government where the project is to be located. Where the provisions of the necessary local government cooperation are not contained in the ordinance or other enactment creating the IHA, the IHA shall submit an executed cooperation agreement (or a copy of an existing one) for the location involved, which is sufficient to cover the number of units in the application.

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(b) *Action on application.* HUD will acknowledge receipt of the application and begin review of the application as soon as possible after receipt. The IHA will be advised of any deficiencies and will be provided an opportunity to make corrections within a reasonable period of time. To be approved, an application must demonstrate legal sufficiency, and need for the housing, and the IHA must have adequate administrative capability (as defined in § 905.102) and the capability to undertake additional development activities. HUD will review the application for the criteria and will approve or disapprove the application.

(1) If the application is disapproved, HUD will notify the IHA in writing and state the reasons for the disapproval;

(2) If the application is approved for the requested number of units or for fewer units, HUD will issue a program reservation.

(c) *Program reservation.* (1) The program reservation will specify program type, housing type, household type, development method, the funds reserved, and the minimum number of total units and units of each bedroom size to be developed. The program reservation will require an IHA to submit a development program within one year (See § 905.225) and will limit the total project development cost to the amount reserved.

(2) As long as the total project development cost is not exceeded, this minimum number of units may be increased. However, no additional units may be developed until HUD approves amendment of the program reservation. If an IHA desires to develop more than the minimum number of units approved in the program reservation, it must submit to HUD a request to amend the program reservation, including

(i) A justification for the increase;

(ii) The tribe's agreement in writing to pay any costs to complete the project in excess of the program reservation;

(iii) Evidence that the tribe has the financial resources to meet any excess costs up to a specified amount; and

(iv) Evidence that the tribe will provide some form of security acceptable to HUD to cover excess costs.

(d) *ACC for planning.* (1) Upon issuance of the program reservation, HUD and the IHA may execute an ACC to cover the costs of preliminary surveys and other HUD-approved planning activities with respect to the number of units covered by the program reservation. The amount of the ACC will not exceed 3 percent of the total development cost of the project, except as provided in paragraph (2) of this section.

(2) HUD may execute an ACC for amounts in excess of 3 percent or for purposes other than for planning activities if the IHA demonstrates to the satisfaction of HUD that

(i) Because of unusual circumstances it is essential that development costs in such amounts or for such purposes be incurred before execution of an ACC for construction and operation;

(ii) The project will successfully proceed to execution of an ACC for construction and operation; and

(iii) The governing body of the locality has agreed to provide the local cooperation required by the Act.

(3) Funds for planning shall in no event be provided or used for purposes, or in amounts, that would not be approvable for inclusion in a development cost budget.

(4) The IHA shall submit for HUD approval together with the request for an ACC for planning a proposed preliminary budget. LACC funds for planning shall not be approved or expended except in accordance with a HUD-approved preliminary budget.

(5) Use of development or operating funds of other projects under ACC to cover costs for a project that is still in the planning stages, and for which a development program has not been adopted or an ACC for construction and operation has not been executed, is strictly prohibited.

(e) *ACC for Construction and Operation.* An ACC for construction and operation of a project shall not be executed until the IHA has adopted, and HUD has approved, the Development Program for the project.

§ 905.225 IHA development program.

An IHA development program is required for all development methods, and must be approved by HUD.

(a) *IHA submission.* Within one year of the program reservation date, the IHA shall prepare and submit to HUD a complete development program on a form prescribed by HUD. If the IHA does not submit a development program within one year, HUD will terminate the program reservation and recapture the funds reserved, unless the Secretary determines that exceptional circumstances exist which are beyond the IHA's control.

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(b) *HUD review.* HUD will review the IHA development program upon receipt. HUD will advise the IHA of any deficiencies and will provide the IHA an opportunity to make corrections within a reasonable period of time. To be approvable, the development program must demonstrate legal sufficiency, the financial feasibility of the project, and its compliance with all program requirements. Upon conclusion of HUD's review, the development program will be either approved or disapproved. If the development program is approved, the ACC will be executed, if necessary, and the IHA will be authorized to acquire the units or prepare final plans for construction. If the development program is disapproved, HUD will notify the IHA of the reasons. If no approvable development program is submitted within the required period, HUD will terminate the program reservation, recapture the funds reserved, and the ACC will be amended, if necessary, to reflect this change.

§ 905.230 Indian preference.

(a) *General.* (1) This section outlines specific methods an IHA must follow to provide, to the greatest extent feasible, preference to Indian organizations and Indian-owned economic enterprises in contracting and subcontracting, and to Indians in employment and training. If, however, a tribal governing body enacts an alternate method of providing Indian preference within its jurisdiction and the Secretary approves the alternate method as meeting the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act for use in the HUD-assisted Indian housing program, the IHA under that jurisdiction must implement the alternate method in lieu of the methods specified in this section. (For purposes of this section, "tribal governing body" means the governing body of an Indian tribe, as defined in § 905.120(a)(1) which exercises powers of self-government and is Federally recognized.) Alternate methods that provide for local tribal preference will not be approved. HUD will, however, consider for approval alternate methods that provide for local resident Indian preference, so long as application of the local preference does not exclude Indian organizations, enterprises, or individuals who are not residing within the Indian governing body's jurisdiction. HUD's review of alternate methods of providing preference will include the extent to which the proposed method minimizes the risk of nonperformance, promotes competition, assures cost containment, reduces administrative burdens and furthers local priorities and objectives while providing effective Indian preference.

(2) This section also contains, in paragraph (g), review procedures for complaints alleging the inadequate or inappropriate provision of Indian preference. (These complaint procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this section, including alternate methods enacted and approved in the manner described in paragraph (a)(1) of this section.)

(b) *Eligibility.* (1) An applicant seeking to qualify for preference in contracting and subcontracting shall submit proof of Indian ownership to the IHA or contractor. Proof of Indian ownership shall include, but shall not be limited to:

(i) Certification by a tribe or other evidence that the applicant is an Indian and therefore eligible to receive preference. IHAs shall accept the certification of a tribe that an individual is a member.

(ii) Evidence such as stock ownership, structure, management, control, financing and salary or profit sharing arrangements of the enterprise.

(2) An applicant seeking to qualify for preference in employment and training shall submit, to the IHA or contractor, certification by a tribe or other evidence that the applicant is an Indian and therefore eligible to receive preference. IHAs and contractors shall accept the certification of a tribe that an individual is a member.

(3) An applicant seeking a contract or a subcontract shall submit evidence sufficient to demonstrate to the satisfaction of the IHA or the contractor, as appropriate, that the applicant has the technical, administrative, and financial capability to perform contract work of the size and type involved, and within the time provided, under the proposed contract. An applicant seeking employment and training shall submit evidence sufficient to demonstrate to the satisfaction of the IHA or the contractor, as appropriate, that the applicant possesses the qualifications required for employment or training.

(4) An IHA may state in its solicitation that bidders must submit evidence of eligibility within a specified time period before a scheduled bid opening.

(5) If an IHA or contactor determines that an applicant is ineligible for Indian preference, the IHA or contractor shall so notify the applicant in writing before the award of the contract or before filling the position or providing the training sought by the applicant.

(c) *Indian preference in the award of contracts and subcontracts.* (1) Preference in the award of contracts and subcontracts that are let under an Invitation for Bids (IFB) process (e.g., conventional bid construction contracts, material supply contracts) shall be provided as follows:

(i) The IFB may be restricted to qualified Indian-owned enterprises and Indian organizations. The IFB should, however, not be so restricted unless the IHA has a reasonable expectation that the required minimum number of qualified Indian-owned enterprises or organizations are likely to submit responsive bids. If two or more (or at the IHA's option, a number greater than two specified in the IFB) qualified Indian enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If fewer than the minimum required number of qualified Indian enterprises or organizations submit responsive bids, the IHA shall reject all bids, and shall readvertise the IFB in accordance with paragraph (c)(1)(ii) of this section. In unusual circumstances and subject to HUD approval, the IHA may accept one bid, e.g., the IHA determines that the single bid received is of an unusually favorable price, or the IHA determines that delays caused by readvertising would subject the project to higher construction costs.

(ii) If the IHA prefers not to restrict the IFB as described in paragraph (c)(1)(i) of this section, or if an insufficient number of qualified Indian enterprises or organizations submit responsive bids in response to an IFB under paragraph (c)(1)(i) of this section, the IHA or contractor shall advertise for bids inviting responses from non-Indian as well as Indian owned economic enterprises and Indian organizations. Award shall be made to the qualified Indian enterprise or organization with the lowest responsive bid if that bid is within budgetary limits established for the specific project or activity for which bids are being taken and no more than "X" higher than the total bid price of the lowest responsive bid from any qualified bidder. "X" is determined as follows:

	X = lesser of:
When the lowest responsive bid is less than $100,000.	10% of that bid, or $9,000.
When the lowest responsive bid is:	
At least $100,000, but less than $200,000.	9% of that bid, or $16,000.
At least $200,000, but less than $300,000.	8% of that bid, or $21,000.
At least $300,000, but less than $400,000.	7% of that bid, or $24,000.
At least $400,000, but less than $500,000.	6% of that bid, or $25,000.
At least $500,000, but less than $1 million.	5% of that bid, or $40,000.
At least $1 million, but less than $2 million.	4% of that bid, or $60,000.
At least $2 million, but less than $4 million.	3% of that bid, or $80,000.
At least $4 million, but less than $7 million.	2% of that bid, or $105,000.
$7 million or more	1% of the lowest responsive bid, with no dollar limit.

If no responsive bid by a qualified Indian enterprise or organization is within the stated range of the total bid price of the lowest responsive bid from any qualified enterprise, award shall be made to the bidder with the lowest bid.

(2) Preference in the award of contracts and subcontracts that are let under a Request for Proposals (RFP) process (e.g., for turnkey proposal construction contracts, professional service contracts) shall be provided as follows:

(i) The RFP may be restricted to qualified Indian-owned economic enterprises and Indian organizations. The RFP should, however, not be so restricted unless the IHA has a reasonable expectation that the required minimum number of qualified Indian-owned economic enterprises or Indian organizations are likely to submit responsive proposals. If two (or, at the IHA's option, a number greater than two specified in the RFP) qualified Indian-owned economic enterprises or Indian organizations submit responsive proposals, award shall be made to the qualified Indian-owned economic enterprise or Indian organization with the best proposal. If fewer than the minimum required number of qualified Indian-owned economic enterprises or Indian organizations submit responsive proposals, the IHA shall reject all proposals and shall readvertise the RFP in accordance with paragraph (c)(2)(ii) of this section. In unusual circumstances and subject to HUD approval, the IHA may accept a proposal that is the only one received, *e.g.* where the IHA determines that delays caused by readvertising would cause higher costs. The IHA shall develop the particulars concerning the RFP, including a rating system that provides for the assignment of points for the relative merits of submitted proposals. The RFP shall identify all factors, including price or cost, and any significant subfactors that will be considered in awarding the contract, and shall state the relative importance the IHA places on each evaluation factor and subfactor.

(ii) If the IHA prefers not to restrict the RFP solicitation as described in paragraph (c)(2)(i) of this section, or if an insufficient number of qualified Indian enterprises or organizations satisfactorily respond under that procedure, the IHA or contractor shall advertise for proposals inviting responses from non-Indian as well as Indian owned economic enterprises and Indian organizations. The IHA shall develop the particulars concerning the RFP, including a rating system that provides for the assignment of points for

the relative merits of submitted proposals. The RFP shall identify all factors, including price or cost, and any significant subfactors that will be considered in awarding the contract, and shall state the relative importance an IHA places on each evaluation factor and subfactor. Notification that Indian preference is applicable to this procurement shall be included in the RFP solicitation.

(A) An IHA shall set aside a minimum of 15% of the total number of available rating points for the provision of Indian preference in the award of contracts and subcontracts. The percentage or number of points set aside for preference and the method for allocating these points shall be specified in the RFP.

(B) IHAs may require that contractors solicit subcontractors by using a RFP based on a point system, and that contractors set aside a minimum of 15% of the available rating points for the provision of Indian preference in subcontracting. The RFP shall explain the criteria to be used by the contractor in evaluating proposals submitted by subcontractors.

(3) Provisions applicable to all contracts.

(i) In all cases, the IHA shall include in the IFB or RFP a description of the contract and subcontract bidding procedures which are to be employed, including the actual language of paragraphs (c)(1)(i), (c)(1)(ii), (c)(2)(i) or (c)(2)(ii) of this section, as appropriate. A finding by an IHA either that a subcontract was awarded without using the procedure required by the IHA, or that the contractor falsely represented that subcontracts would be awarded to Indian enterprises or organizations, shall be grounds for termination of the contract between the IHA and its contractor, or for other penalties as appropriate. These grounds for termination of the contract or for the imposition of other penalties shall be set out in the IFB or RFP and shall be included in each contract and subcontract.

(ii) Each IFB and RFP shall state whether the IHA maintains lists of Indian-owned economic enterprises and Indian organizations by speciality (e.g., plumbing, electrical, foundations), which are available to developers, contractors, and subcontractors to assist them in meeting their responsibility to provide preference in connection with the administration of contracts and subcontracts.

(iii) The IHA shall require a statement from all prospective contractors or developers describing how they will provide Indian preference in the award of subcontrcts. Each IHA shall describe in its IFB or RFP (A) what provisions each prospective developer or contractor must include in its statement and (B) the factors that will be used by the IHA in judging the statement's adequacy. Any bid or proposal that fails to include the required statement shall be rejected as nonresponsive. An IHA may require that a comparable statement be provided by subcontractors to their contractors, and may require a contractor to reject any bid or proposal by a subcontractor that fails to include the statement, as specified by the IHA in the IFB or RFP.

(iv) Each contractor or subcontractor shall submit a certification (supported by credible evidence) to the IHA in any instance where the contractor or subcontractor believes it is infeasible to provide Indian preference in subcontracting. The IHA may examine the evidence submitted and may accept or reject the certification.

(4) The Indian preference requirements contained in this subsection shall be subject to additional preference provisions in paragraph (f) of this section.

(d) *Preference by an IHA in contracting, employment and training.* (1) To the greatest extent feasible, IHAs shall, in the conduct of their own operations, adhere to the requirements regarding preference in contracting. Where the provisions of preference is determined by an IHA to be infeasible, an IHA shall document in writing the basis for its findings and shall maintain for three years the documentation in its files for HUD review and provide HUD with a copy of the determination within 20 days of its issuance.

(2) To the greatest extent feasible, preference shall be given to qualified Indians for employment or training for IHA staff positions. Each IHA shall document the method and justification used in selecting individuals for employment or training. A finding by HUD that an IHA has not provided preference to the greatest extent feasible to Indians in selecting individuals for employment or training shall be grounds for HUD to invoke its remedies under this Part or under the ACC, which remedies include, but are not limited to, the denial of future projects.

(3) The Indian preference requirements contained in this subsection shall be subject to additional preference provisions in paragraph (f) of this section.

(e) *Preference by contractors and subcontractors in employment and training of Indians.*—(1) *IFB Contracts.* (i) For contracts let under an IFB, the IFB shall state that each contractor and subcontractor must include in its bid response (A) a statement detailing its employment and training opportunities and its plans to provide preference to Indians in implementing the contract; and (B) the number or percentage of Indians anticipated to be employed and trained. The IFB shall explain the criteria to be used by the IHA or the contractor in evaluating contractor or subcontractor statements.

(ii) Any bid that fails to include the required statement, or that includes a statement that does not meet minimum standards required by the IHA or contractor (as appropriate) shall be rejected as nonresponsive.

(iii) Failure to comply with the submitted statement shall be a ground for cancellation of the contract or for the assessment of penalties or other remedies. The IFB and the contract shall describe the actions that may be taken by an IHA for noncompliance with the undertakings set out in the contractor's or subcontractor's statement.

(iv) A finding by HUD that an IHA has entered into a contract that failed to include an acceptable statement on preference in employment and training shall be grounds for HUD to invoke its remedies under this part or under the ACC, which remedies include, but are not limited to, the denial of future projects.

(2) *RFP Contracts.* (i) For contracts let under an RFP, the RFP shall state that each contractor and subcontractor must include in its proposal response (A) a statement detailing its employment and training opportunities and its plan to provide preference to Indians in implementing the contract; and (B) the number or percentage of Indians anticipated to be employed and trained. The RFP shall explain the criteria to be used by the IHA or the contractor in evaluating contractor or subcontractor statements.

(ii) For contracts awarded under paragraph (c)(2)(i) of this section, (where a point system is not used to evaluate the relative merits of proposals), any proposal that fails to include the required statement, or that includes a statement that does not meet minimum standards required by the IHA or contractor (as appropriate), shall be rejected as nonresponsive. For contracts awarded under paragraph (c)(2)(ii) of this section (where a point system is used to evaluate the relative merits of proposals) ten percent of the total points available during evaluation of the proposal shall be awarded on the basis of the content of the statement. (These points are in addition to and separate from any points awarded for the provision of Indian preference in

contracting or subcontracting in accordance with paragraphs (c)(2)(ii) (A) and (B) of this section.) Proposals that fail to include a statement shall be rejected as nonresponsive.

(iii) Failure to comply with the submitted statement shall be a ground for cancellation of the contract or for the assessment of penalties or other remedies. The RFP and the contract shall describe the actions that may be taken by an IHA for noncompliance with the undertakings set out in the contractor's or subcontractor's statement.

(iv) A finding by HUD that an IHA has entered into a contract that failed to include an approved statement in implementing preference in employment and training opportunities shall be grounds for HUD to invoke its remedies under this part or under the ACC, which remedies include, but are not limited to, the denial of future projects.

(3) Provisions on employment or training applicable to all contracts. The IHA shall require contractors and subcontractors to provide preference to the greatest extent feasible by hiring qualified Indians in all positions other than core crew positions, except where the contractor adequately advertises a position and no Indian either qualifies or accepts the terms of employment. The IHA shall indicate what it considers to be adequate advertisement in the IFB or RFP (as appropriate) and in the contract. A core crew employee is an individual who is (i) a bona fide employee of the contractor of subcontractor at the time the bid or proposal is submitted; or (ii) an individual who was not employed by the contractor or subcontractor at the time the bid or proposal was submitted, but who is regularly employed by the contractor of subcontractor in a supervisory or other key skilled position when work is available. Each contractor shall submit a list of all core crew employees with its bid or proposal.

(4) The Indian preference requirements contained in this subsection shall be subject to additional preference provisions in paragraph (f) of this section.

(f) *Other preference provisions applicable to paragraphs (c), (d), and (e).* (1) When both HUD and non-Federal funds are used for a project, the work to be accomplished with the funds should be separately identified, and HUD's Indian preference regulations must be applied to the work financed by HUD. If the funds cannot be separated, HUD's Indian preference regulations will apply to the total project.

(2) Each IHA shall be responsible for monitoring Indian preference implementation in subcontracting, employment, and training by its contractors and subcontractors. Should incidents of noncompliance be found to exist, the IHA shall take appropriate remedial action. A finding by HUD that the IHA has not provided adequate monitoring or enforcement of Indian preference may result in a determination by HUD that the IHA is in breach of the ACC or that the IHA lacks administrative capability. Such a finding may constitute grounds for HUD to invoke its remedies under this part or under the ACC, which remedies shall include, but are not limited to, the denial of future projects.

(3) Preference in contracting, subcontracting, employment, and training applies not only on-site, on the reservation, or within the IHA's jurisdiction, but also to contracts with firms that operate outside these areas (e.g., employment in modular or manufactured housing construction facilities).

(4) Each IHA should include in the IFB or RFP any applicable local preference requirements properly imposed by the tribal governing body, or should advise bidders to contact the tribal governing body to determine any applicable preference requirements. However, IHAs may not in any case authorize or provide a preference for Indians, based on particular tribal affiliation or membership.

(g) *Review procedures for complaints alleging inadequate or inappropriate provision of preference.* (1) Each complaint (including complaints against an IHA) shall be in writing, signed, and filed with the IHA. Complaints may be filed only by a person or business entity claiming to have been adversely affected by the actions or inactions of an IHA, a contractor or subcontractor in connection with the provision of preference to Indians in contracting, subcontracting employment or training.

(2) A complaint must be filed with the IHA no later than 20 days from the date of the action (or omission) upon which the complaint is based.

(3) Upon receipt of a complaint, the IHA shall promptly stamp the date and time of receipt upon the complaint, acknowledge its receipt in writing to the complainant within five (5) days, and shall investigate, and within 15 days shall either meet, or communicate by mail or telephone with the complaining party in an effort to resolve the matter. In all cases, but especially where the complaint indicates that expeditious action is required to preserve the rights of the complaining party, the IHA shall endeavor to resolve the matter as expeditiously as possible. If noncompliance with Indian preference requirements is found to exist, the IHA shall take appropriate steps to remedy the noncompliance and to amend its procedures so as to be in compliance. If the matter is not resolved to the satisfaction of the complaining party, or if the IHA has failed to communicate with the complaining party in an effort to resolve the complaint within 15 days following the IHA's receipt of a complaint, the complaining party may file a written complaint with the appropriate Indian Field Office of HUD. In any event, complaints filed with HUD must be received within six months after the alleged adverse action by the IHA, contractor or subcontractor. The address of the Indian Field Office and the name of the appropriate Indian program officer shall be included in the initial communication from the IHA acknowledging receipt of the complaint.

(4) Upon receipt of a written complaint, the HUD Indian Field Office will request that the IHA provide a written report setting forth all relevant facts, including, but not limited to: (A) The date the complaint was filed with the IHA; (B) the name of the complainant; (C) the nature of the complaint, including the manner in which Indian preference was or was not provided; and (D) actions taken by the IHA in addressing or resolving the complaint. The IHA shall provide copies of its report and all relevant documents concerning the complaint to HUD within ten days after receipt of the HUD request.

(5) Upon receipt of the IHA's report, the HUD Indian Field Office will determine whether the actions taken by the IHA comply with the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act, and with Indian preference requirements under this part. Notification of the Field Office's determination shall be provided to the IHA and to the complaining party, orally or in writing, no later than 30 days following HUD's receipt of the complaint. If the notice is oral, it shall be promptly confirmed in writing. If the complaining party's alleged injury will occur during this 30-day period, the HUD Indian Field Office will make a good faith effort to make its determination before the occurrence of such injury (e.g., contract award).

(6) Where the HUD Indian Field Office determines on the basis of the facts provided by the IHA and on the basis of other available information that there has been noncompliance with Indian preference requirements, the Field Office shall instruct the IHA to take appropriate steps to remedy the

noncompliance and to amend its procedures so as to be in compliance.

(7) The decision of the HUD Indian Field Office may be appealed to the Assistant Secretary for Public and Indian Housing. The decision of the Assistant Secretary for Public and Indian Housing shall constitute final agency action for purposes of the Administrative Procedure Act.

§ 905.235 IHA contracts in connection with development.

(a) *General Prohibition.* Unless specifically authorized, an IHA shall not enter into any contract in connection with the development of a project without HUD approval. This requirement does not apply to MHO Agreements or such other contracts as HUD may specify.

(b) *HUD Authorization.* Where HUD has determined that an IHA has superior administrative capability, HUD may authorize the IHA in writing to execute contracts without HUD approval for work, materials, equipment and/or professional services. In such cases, the IHA will certify that program requirements have been satisfied. HUD will monitor IHA performance of this function, and may at any time rescind such authorization or require additional training of IHA staff as a condition of continued authorization.

(c) *Construction Contract Award.* (1) The IHA shall adopt and promulgate, and shall comply with, rules or regulations for procurement and administration of contracts in connection with development, including bid protest procedures.

(2) The IHA shall not award a construction contract for the project until the prospective contractor has demonstrated the technical, administrative and financial capability to perform contract work of the size and type involved and within the time provided under the contract. The IHA shall not award a construction contract to a person on the HUD list of contractors and grantees debarred or suspended from participation in HUD programs.

§ 905.240 Site selection criteria.

(a) *Relation to Local and Regional Plans.* Selected sites must comply with all applicable Tribal, local and/or regional plans.

(b) *Access Roads.* Access roads up to the boundaries of multi-unit sites shall be provided by the BIA, the tribe or other appropriate agency and shall not be an eligible cost of the project. Access roads up to the boundaries of individual homesites in a scattered site project shall be provided by the homebuyer, the tribe, or other appropriate agency and shall not be an eligible cost of the project. Access roads shall be maintained by a responsible local entity to provide safe and suitable vehicular access at all times. No site may be approved unless such access roads exist, or a written assurance has been obtained from the responsible entity that roads will be constructed before commencement of project construction.

(c) *Water and Sanitation.* Before final site approval or before construction start, the IHA shall obtain a written assurance from the IHS (or the appropriate local agency) that adequate water and sanitation facilities exist or will be provided in time for occupancy of the housing.

(d) *Electricity, Heating and Cooking Sources.* Before final site approval, the IHA shall obtain a written assurance from the appropriate utility companies (or other responsible entities) providing electricity and heating and cooking fuels that the sources exist or will be provided in time for occupancy of the housing.

(e) *Physical Characteristics of Site.* The physical characteristics of a site shall facilitate overall economy in site preparation, construction, and management. Only reasonable costs will be approved for surveys, planning, test borings, and test wells.

(f) *Topography.* (1) Sites with dominant grades in excess of fifteen percent shall not be used unless no other approvable sites are available, in which case a written justification shall be provided.

(2) Low-lying and flat sites shall not be approved unless practical and economical means of surface drainage can be provided to accommodate the level of rainfall expected.

(3) The topography shall permit the acceptable placement of the proposed number and type of units.

(g) *Subsurface conditions and natural hazards.* (1) Where there is any evidence to suggest that a site may have unsuitable bearing qualities or excessive areas of rock to be excavated, HUD will not give final site approval until an examination of the adverse conditions has indicated that they can be overcome without unreasonable additional costs to the project.

(2) HUD will not approve a site if the hazard of earthslides exists either on the site or on adjacent land.

(3) The IHA shall take appropriate precautions in the design of the project in areas where local experience shows past loss of life or damage resulting from earthquakes.

(4) The IHA shall undertake subsurface soil investigations, if required, as soon as HUD gives tentative site approval. Professional competence in soils and foundation engineering shall be required for both the performance of the investigation and the evaluation of the results.

(5) HUD will not give final site approval if it has been determined that there is an unreasonable risk of natural hazard, unless such risk can be mitigated through design and construction.

(h) *Flooding.* HUD will not approve a site located in a special flood hazard area identified by the Federal Emergency Management Agency or a wetland designated by the Department of Interior until it has received special processing by HUD and been found to be in compliance with Executive Orders 11988 (Floodplain Management) and/or 11990 (Protection of Wetlands) in accordance with § 905.125(a). See also the requirement for flood insurance coverage found in § 905.125(b).

(i) *Multi-Unit and Scattered Sites.* A project may consist of a multi-unit site (including individual homes on contiguous lots), or scattered sites, or a combination.

(j) *Size of Sites.* (1) The size of a multi-unit site shall be no greater than necessary to permit an acceptable arrangement for the proposed number and type of units.

(2) No individual homesite, whether a scattered site or included in a multi-unit site, shall exceed one acre without HUD approval. The amount to be included in the development cost for such a site shall not exceed its portion of the total cost (or its appraised value in the case of a contributed homesite) allocated to one acre.

(k) *Trust or Restricted Land.* HUD will not give final approval of a site on trust or restricted land unless the IHA obtains written assurance from the BIA that a valid lease executed by all the necessary parties can be obtained within a reasonable time and before start of construction. In any event, construction may not begin on a site until a valid lease is executed.

§ 905.245 Types of interest in land.

(a) *Trust or Restricted Land.* Sites on tribally or individually owned trust or restricted land (as defined in 25 CFR 151.2) shall be leased to the IHA for a term of not less than 50 years (25 years, automatically renewable for an additional term of 25 years) on a lease form approved by HUD. For sites on trust or restricted land, HUD may accept a title status report furnished by the BIA.

(b) *Unrestricted Land.* Sites on unrestricted land shall be either conveyed to the IHA in fee or leased to the IHA on a lease form approved by HUD for a term of not less than 50 years.

§ 905.250 Appraisals.

(a) *Requirement for appraisals.* When the cost of site is to be charged to the IHA's development cost, an appraisal shall be made in accordance with the standards specified in this section.

(b) *Performance of appraisals.* The IHA shall submit a formal request for appraisal to HUD or BIA, as appropriate. When BIA appraisal service is available, appraisals shall be provided by the BIA in accordance with paragraph (c) of this section (unless HUD agrees to provide the service), and shall be accepted by HUD. Otherwise, all appraisals shall be provided by HUD.

(1) *Conformity with appraisal standards.* All appraisals shall be in conformance with established and generally recognized appraisal practice and procedures in common use by professional appraisers. Opinions of value shall be based on the best available data, properly analyzed and interpreted.

(2) *Nature of legal interest in land.* In valuing the property interest to be conveyed to the IHA, appraisals shall give full consideration to the nature of the property interest, including any legal and market restrictions and restraints on alienation that affect market value. It shall be determined whether the interest to be conveyed to the IHA is fee simple title, an easement, a leasehold or another property right. In the case of tribally or individually owned trust or restricted land to be leased to the IHA, the appraiser shall report the value of the leasehold.

(3) *Market data comparables.* In the application of the market data approach to valuation, property shall be compared with properties that have been leased or sold recently in the same or competing market areas.

(4) *Valuation of trust or restricted land.* When the interest to be appraised is a leasehold interest in tribally or individually owned trust or restricted land and comparable leasehold transactions are not available, the appraiser shall estimate the value of the land as if alienable in fee, based on a comparison of the land being valued with sales of fee interests in comparable land in the same or competing market areas.

(Approved by the Office of Management and Budget under OMB control number 2577–0031)

§ 905.255 Site approval.

(a) *IHA Requests.* An IHA shall request approval for each site by submitting the prescribed form to HUD generally before, but no later than simultaneously with, the development program, discussed in § 905.265. The IHA request shall include all exhibits required by the form, including the written approval of the BIA and IHS where needed.

(Approved by the Office of Management and Budget under the OMB control number 2577–0031)

(b) *HUD review.* If the site has not been proposed previously, HUD shall inspect each site to assure it meets the site selection criteria in § 905.240 and assess its environmental impact. HUD shall notify the IHA as soon as possible of conditional approval, final approval, or disapproval of the proposed site. If conditional approval is given, the notification shall state the conditions to be met for final site approval. HUD shall state the reasons for disapproval of any site.

(c) *IHA certification.* Where HUD has determined that an IHA has superior administrative capability, HUD may authorize the IHA in writing to submit a certification that the actions necessary to satisfy the conditions of final site approval have been completed and the site is acceptable. HUD will monitor IHA performance of this function, and may at any time rescind in writing such authorization or require additional training of IHA staff as a condition of continued authorization.

(d) *Timing.* No site may be acquired or leased, no commitment shall be made to acquire or lease, and no construction may commence on a site until HUD issues final site approval. Leases and rights-of-way must be obtained on trust or restricted land, and unrestricted land must be acquired, before HUD will authorize solicitation of construction bids or construction on any units.

§ 905.260 Design criteria.

(a) *Standards.* To further the goal of cost containment, the design of the housing shall take into account the extra durability required for safety and security and economical maintenance, and the need for maximizing the conservation of energy. Designs shall conform to any applicable national, tribal, State, or local building codes, and may include culturally preferred amenities. Where feasible, use of plans previously approved by HUD to foster cost containment is encouraged. The project shall be designed so that the estimated cost of constructing and equipping the dwellings will not exceed the total development cost standard, and the estimated cost of the entire project will not exceed the amount reserved.

(b) *Fuel and Energy Consumption.* In selecting from among design options for heating, cooking, and electrical systems, maximum attention shall be given to cost, adequacy, maintenance of the system, and the longterm reliability of fuel supplies. Where fuel is not locally available at low cost, alternate systems such as wind, solar, or coal, may be used and included in the project cost.

(c) *HUD Approval.* The design chosen by the IHA will not be disapproved by HUD without justification. The justification shall consist of a showing by HUD that the design does not meet applicable tribal, State or local building standards, or that the project cannot be constructed within the allowable project cost limit.

§ 905.265 Total development cost standard.

(a) *Establishment of separate Indian cost areas.* Because trade conditions and economic influences cause construction costs in an Indian area to be significantly different from such costs in non-Indian areas, HUD shall establish separate Indian cost areas. The factors considered in establishing these separate areas include—local customs, abnormal climatic conditions, the logistical problems associated with remote locations, low density or scattered sites, unavailability of skilled labor or acceptable materials, provisions for the use of wood or coal as an alternative heat source, and the unavailability of the legal protection normally available for enforcement of claims by contractors, laborers and material suppliers with respect to trust or restricted land.

(b) *Total development cost standard.* The total development cost standards for each cost area will be issued by the Department on a regular basis. They will reflect the total development cost for various unit sizes, housing types and market areas (*i.e.*, areas within which trade conditions and economic influences tend to make development costs substantially the same). The standards will be based on actual Indian housing project data as well as cost data provided by commercially available cost and valuation services specified by the Department. When the standard is issued for an area, HUD will describe the methodology used to compute them and information about documentation to be submitted by an IHA in support of any request for a revision to the standard

(c) *Revision of total development cost standard.* HUD will examine total development cost standards at least annually and determine if adjustments are needed to reflect current cost levels. If an IHA finds for a particular area that no design can be built within the existing cost standard, it may request the Secretary to revise the cost standard or to establish a separate market area for its jurisdiction. The request shall be accompanied by evidence to support an increase in the standard. HUD will agree to revise the standard only if it determines that the evidence submitted shows that higher standards are reasonable and necessary to develop a project which is durable, safe and secure, and which provides for economical maintenance, healthy family life, good design and energy conservation.

(d) *Approval of total development cost for a project.* (1) The total development cost, as defined in § 905.102, is the amount approved by HUD for development of a particular project. The TDC will not exceed the total development cost standard, discussed in paragraph (b) of this section, unless the Secretary approves a higher amount as reasonable and necessary to the development of a project that provides durability, safety, security, economical maintenance, healthy family life, good design and energy conservation. For example, higher costs may be justified on the basis of special circumstances relating to security in high crime areas, unusual environmental or site considerations, remoteness, etc.

(2) In approving the total development cost, HUD will approve a reasonable amount for preliminary planning, but the amount may not exceed 3 percent of the total development cost.

(3) The IHA shall complete development of each project at the lowest possible cost, and in no event may the cost of the project exceed the approved total development cost. However, funds for off-site water and sewer facilities are not included in the total development cost and are not subject to the total development cost standard limitation.

§ 905.270 Construction and inspections.

Following approval of the development program, the IHA shall commence final planning and begin construction within one year. Unless there are exceptional circumstances beyond the IHA's control, failure to commence construction within this period is good cause for HUD termination of the ACC and recapture of the reserved funds.

(a) *Conventional projects.* Unless specifically authorized, the IHA shall submit for HUD approval, all final plans, specifications, bid documents before advertising, bid evaluations and contract award documents. Where HUD has determined that the IHA has superior administrative capability (see § 905.145), HUD may authorize the IHA in writing to prepare the plans, advertise and award a construction contract without HUD approval and to submit to HUD a certification that it has complied with HUD procedures in developing the plans, advertising and contract award, with copies of the plans, advertisements and construction contract.

(b) *Turnkey Projects.* Unless specifically authorized, the IHA shall submit to HUD the request for proposals and all the final plans and specifications prepared by the turnkey developer; and the IHA shall receive HUD approval before executing the Contract of Sale. Where HUD has determined that the IHA has superior administrative capability (see § 905.145), HUD may authorize the IHA in writing to certify proper preparation of the plans and to execute the Contract of Sale without approval. The IHA shall submit copies of the plans and Contract of Sale with the certification of HUD.

(c) *Force account.* Unless specifically authorized to do otherwise, the IHA shall submit the final working drawings for HUD approval, showing the scope of work to be performed by the IHA staff or by subcontractors. The solicitation for work shall be reviewed by HUD as in the case of conventional projects. Where HUD has determined that the IHA has superior administrative capability (see § 905.145), HUD may authorize the IHA in writing to certify proper preparation of the drawings, and to begin work without HUD approval.

(d) *IHA construction inspections.* Whatever the development method used, the IHA shall be responsible for obtaining independent inspections during construction. The frequency of inspections and the procedures to be used shall assure completion of quality housing in accordance with the contract documents. Inspections shall be performed by an independent architect, engineer, or other qualified person selected by the IHA and approved by HUD.

(e) *HUD construction monitoring.* HUD representatives or agents shall visit construction sites to evaluate the IHA's contract administration.

(f) *Completion inspection.* (1) The contractor shall notify the IHA in writing when the contract work (or stage) is completed and ready for final inspection. If the IHA agrees that the contract work (or stage) is ready for final inspection, the IHA shall arrange for the inspection. The final inspection shall be made jointly by the IHA, HUD and the contractor. In a MH project, homebuyers shall also be invited to participate in the inspection of their homes, but acceptance shall be by the IHA with HUD approval. When the BIA has maintenance responsibility for any part of the project after completion, it too shall be invited to participate.

(2) If the inspection discloses no deficiencies other than punch list items, the IHA shall develop an interim Certificate of Completion for submission to HUD. The interim Certificate will detail the items remaining and set forth a schedule for their completion, and will allow the IHA to accept the units (or stage) for occupancy. Upon HUD approval of the interim Certificate, the IHA may release the monies due the contractor less withholdings in accordance with the construction contract.

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(3) The contractor shall complete the punch list items in accordance with the time schedule. Unless specifically authorized, HUD approval is required before the IHA may pay the contractor for such items. The IHA shall not accept an item if there is a dispute as to whether the item has been completed. If the IHA is satisfied that the applicable requirements of the construction contract and the interim Certificate have been met, the IHA shall submit a final Certificate of Completion for HUD approval. Where HUD has determined that the IHA has superior administrative capability (see § 905.145), HUD may authorize the IHA to submit the final certificate and to certify that the items have been completed, and release the amounts withheld to the contractor.

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(g) *Rescinding HUD authorization.* In all cases where an IHA has been authorized to certify adherence to requirements of this section, HUD will monitor performance of this function. HUD may rescind such authorization at any time upon written notification or may require additional training of IHA staff as a condition of continued authorization.

§ 905.275 Warranty inspections and enforcement.

(a) The construction contract shall specify the warranty periods applicable

to items completed as of the date of full availability (DOFA) determined by HUD, and to items completed after that date. It shall also provide for assignment to the IHA of manufacturers' and suppliers' warranties covering equipment or supplies.

(b) The IHA shall inspect each dwelling unit no less often than every three months during the contractor's warranty period, beginning three months after the date of memorandum of acceptance for occupancy is executed by the IHA and HUD (following an on-site inspection). A final inspection shall be made in time to exercise the IHA's rights before expiration of the contractor's warranties. Each inspection shall cover all items under warranty at the time of the inspection, including items covered by manufacturers' and suppliers' warranties. At each inspection, the IHA shall obtain a signed statement from the occupants as to any deficiencies in the structure, equipment, grounds, etc., so that it may enforce any rights under applicable warranties.

§ 905.280 Correcting deficiencies.

(a) *Responsibility.* The IHA must pursue correction of any deficiencies against the responsible party (e.g. architect, contractor or the MH homebuyer) as soon as possible after discovering the deficiencies. Where the costs of correcting deficiencies cannot be recovered from the responsible party and/or the deficiency requires immediate correction to protect life or safety or to avoid further damage to the project unit(s), the development budget may be amended to provide the funds required, or operating receipts may be used to cover the costs. In any case, program funds shall not be used for this purpose without prior HUD approval. The IHA shall be responsible for correction of any deficiencies which could have been detected and/or corrected during the warranty period if the IHA had inspected at the appropriate time or had pursued correction of deficiencies against the responsible parties.

(b) *Amendments.* (1) The ACC may be amended to provide amounts needed to correct deficiencies (and any damage resulting therefrom) in design, construction, and equipment only where there is substantial evidence that it is not possible to obtain timely correction or payment by the responsible parties, including the source of the performance bond.

(2) In the case of a MH home, the additional cost for correcting deficiencies in design, construction or equipment (and any damage resulting therefrom) shall not result in an increase in the homebuyer's purchase price. If a homebuyer is not in compliance with the MHO Agreement, HUD may require the IHA to reach agreement with the homebuyer to correct the noncompliance before approving the work.

(c) *Fiscal closeout.* Upon completion of the development program, the IHA shall submit the actual development cost certificate, in a form prescribed by HUD, to the HUD office for review, audit verification and approval. The audit shall follow the requirements of 24 CFR Part 44 (Single Audit Act of 1984). If the audited development cost indicates that excess funds have been approved, the IHA shall dispose of the excess as HUD directs. If the audited development cost certificate discloses unauthorized expenditures, the IHA shall take such corrective actions as HUD directs.

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Subpart C—Operation

§ 905.301 Admission policies.

(a) *Admission policies.* (1) The IHA shall adopt and promulgate regulations establishing the IHA's policies for admission of tenants or homebuyers. Such regulations shall specify the types of projects to which they apply (*i.e.*, Rental, MH, or Turnkey III). A copy of the regulations shall be posted prominently in the IHA's office for examination by prospective tenants or homebuyers, and shall be submitted to HUD promptly after adoption by the IHA.

(2) These regulations shall be designed: (i) To avoid concentrations of the most economically and socially deprived families in any one or all of the IHA's projects; (ii) to attain at initial occupancy or within a reasonable period of time for projects beyond the state of initial occupancy (but without prejudice to contract rights of homebuyers), a tenant or homebuyer body in each project composed of families with a broad range of incomes [and rent-paying ability] which generally is representative of the range of incomes of those lower income families in the Indian area who would be qualified for admission to the type of project; (iii) to preclude admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on the tenants or the project environment; and (iv) to achieve compliance with the provisions of this subpart that specify the requirements concerning income levels of families who otherwise qualify but who are not very low-income families.

(3) The IHA admission regulations also shall include policies and procedures governing tenant and homebuyer transfer between units, projects and programs; requirements for applications and waiting lists for transfer between programs; and other IHA priorities, if any, and a requirement that a tenant or homebuyer is not eligible for voluntary transfer unless all obligations under the current program have been met, including payment of charges to the IHA and maintenance requirements.

(b) *Income limits.* (1) A family must be a Lower Income Family, as defined in § 905.102, to be eligible for admission.

(2) Where decent, safe and sanitary housing is not otherwise being provided in an Indian area even for those of relatively high income, and there is no available source of funding for such housing, the IHA may request that HUD increase income limits for lower income families or very low-income families in that area.

(c) *Standards for IHA tenant/homebuyer selection criteria.* (1) The criteria to be established and information to be considered shall be reasonably related to individual attributes and behavior of an applicant, and shall not be related to those which may be imputed to a particular group or category of persons of which an applicant may be a member. The IHA's tenant/homebuyer selection criteria must be in accordance with HUD guidelines and approved by the HUD Field Office.

(2) In the event of any unfavorable information regarding an applicant, the IHA must take into consideration the time, nature and extent of the past occurrence and reasonable probability of future favorable performance.

(d) *Pet ownership in rental housing for the elderly or handicapped.*

(1) No IHA that owns or manages a project for the elderly or handicapped may:

(i) As a condition of tenancy or otherwise, prohibit or prevent any tenant of such housing from owning common household pets or having such pets living in the tenant's dwelling unit, or

(ii) Restrict or discriminate against any person in connection with admission to, or continued occupancy of, such housing by reason of the person's ownership of common household pets or the presence of such pets in that person's dwelling unit.

(2) The IHA must give each applicant (when he or she is offered a dwelling

unit in a project for the elderly or handicapped) written notice stating that:

(i) Tenants are permitted to own and keep common household pets in their dwelling units, in accordance with any pet rules promulgated under this paragraph;

(ii) Animals that are used to assist the handicapped are excluded from the requirements of this paragraph, as provided in paragraph (d)(5) of this section; and

(iii) Tenants may, at any time, request a copy of any current pet rule developed by the IHA (as well as any current proposed rule or proposed amendment to an existing rule).

(3)(i) An IHA that owns or manages a project for the elderly or handicapped has discretion to decide whether to promulgate rules governing the keeping of common household pets in the project.

(ii) If the IHA wishes to promulgate these rules, it must request guidance from HUD.

(iii) If the IHA does not wish to promulgate these rules, the following requirements apply:

(A) Tenants must be permitted to own and keep pets in their units in accordance with the terms and conditions of their leases, the provisions of this paragraph, and any applicable law or regulation governing the owning or keeping of pets in dwelling accommodations.

(B) IHAs may not impose, by lease modifications or otherwise, any requirement that is inconsistent with the provisions of this paragraph.

(C) Tenant leases may not contain any provisions prohibiting the owning or keeping of common household pets, and must state that owning and keeping of common household pets will be permitted, subject to the general obligations imposed on the IHA and tenants in the lease and any applicable law or regulation governing the owning or keeping of pets in dwelling accommodations.

(4) Nothing in this paragraph prohibits an IHA or an appropriate community authority from requiring the removal of any pet from a project, if the pet's conduct or condition is duly determined to constitute, under applicable law, a nuisance or a threat to the health or safety of other occupants of the project or of other persons in the community where the project is located.

(5)(i) IHAs may not apply or enforce any pet rules developed under this paragraph (d) against individuals with animals that are used to assist the handicapped, whether the animal resides in a project for the elderly or handicapped or visits such a project.

(ii) Nothing in this paragraph (d):

(A) Limits or impairs the rights of handicapped individuals,

(B) Authorizes IHAs to limit or impair the rights of handicapped individuals, or

(C) Affects any authority that IHAs may have to regulate animals that assist the handicapped under any applicable law.

(e) *Single Person Occupancy Limitations Under Section 3(b)(3) of the Act.* [Reserved]

(f) *Verification of Information and Notification to Applicants.*—(1) *Verification.* Adequate procedures shall be developed to obtain and verify information with respect to each applicant. Information relative to the acceptance or rejection of an applicant shall be documented and placed in the applicant's file.

(2) *Notification to Applicants.* (i) If an applicant is determined to be ineligible for admission to a project, the IHA shall promptly notify the applicant of the basis for such determination and shall provide the applicant, upon request and within a reasonable time after the determination is made, with an opportunity for an informal hearing on such determination; and

(ii) When a determination has been made that an applicant is eligible and satisfies all requirements for admission including the tenant selection criteria, the applicant shall be notified of the approximate date of occupancy insofar as that date can be reasonably determined.

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§ 905.310 Restriction against ineligible aliens. [Reserved]

§ 905.315 Determination of rents and homebuyer payments.

(a) *Rental and Turnkey III Projects.* The amount of rent required of a tenant in a rental project or the homebuyer payment amount for a homebuyer in a Turnkey III project for Turnkey III contracts executed after August 1, 1982, shall be equal to the tenant rent as determined in accordance with § 905.325. For Turnkey III contracts executed on or before August 1, 1982, the homebuyer payment is determined in accordance with the contract. In the utility allowance exceeds the rent or required monthly payment, the IHA will pay the utility reimbursement to the tenant or homebuyer, or as provided in § 905.325(b). In the case of a Turnkey III homebuyer, payment of a utility reimbursement may affect the IHA's evaluation of the homebuyer's homeownership potential. (See § 905.503(c)(3) and § 905.529 regarding loss of homeownership potential and § 905.523 regarding funds to cover such reimbursements.)

(b) *MH projects.* The amount of the required monthly payment for a homebuyer in an MH project placed under ACC on or after March 9, 1976, and a homebuyer admitted to occupancy in an existing project on or after the effective date of the conversion of the project in accordance with § 905.495 shall be determined in accordance with § 905.330. The amount of the required monthly payment for a homebuyer in an MH project placed under ACC before March 9, 1976 is determined in accordance with the MH Agreement. Utility reimbursements are not applicable to the Mutual Help program.

(c) *Initial determination, verification, and reexamination of family income and composition.* (1) The IHA shall be responsible for determination of eligibility for admission, for determination of annual income, adjusted income, and total tenant payment or homebuyer required monthly payment, and for reexamination of family income and composition at least annually for all tenants and homebuyers. The "effective date" of an examination or reexamination shall be: (i) in the case of an examination for admission, the date of initial occupancy; and (ii) in the case of a reexamination of an existing tenant or homebuyer, the date on which any change in tenant payment or required monthly payment resulting from the reexamination takes place. If there is no change, the effective date is the date a change would have taken place if the reexamination had resulted in a change in payment.

(2) *Verification.* As a condition of admission to, or continued occupancy of, any unit, the IHA shall require the family head and other such family members as it designates to execute a HUD-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the IHA and to HUD such information as the IHA or HUD determines to be necessary. The IHA also shall require the family to submit directly the documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining or auditing a family's eligibility to receive housing assistance, for determining the family's adjusted income or tenant rent or required monthly payment, for verifying related information, or for monitoring

compliance with equal opportunity requirements. The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of this part or applying for assistance.

(3) *Rent and payment adjustments.* After consultation with the family and upon verification of the information, the IHA shall make appropriate adjustments in the rent or homebuyer payment amount. The tenant or homebuyer shall comply with the IHA's policy regarding required interim reporting of changes in the family's income. If the IHA receives information from the family or another source concerning a change in the family's income, or other circumstances between regularly scheduled reexaminations, the IHA, upon consultation with the family and verification of the information, must promptly make any adjustments determined to be appropriate in the rent or homebuyer payment amount. (See § 905.330(b).)

(4) *Restriction on Eviction of Families Based Upon Income.* (i) No IHA shall commence eviction proceedings for a rental unit, or refuse to renew a lease, based on the income of the tenant family unless it has identified, for possible rental by the family, a unit of decent, safe, and sanitary housing of suitable size available for a total rental cost not exceeding the total tenant payment, as calculated in accordance with this part.

(ii) For homeownership programs (Turnkey III and MH), homebuyers cannot be evicted based on income, but they may lose eligibility to continue participation in a particular homeownership program.

§ 905.320 Annual income.

(a) Annual income is the anticipated total income from all sources received by the family head and spouse (even if temporarily absent) and by each additional member of the family, including all net income derived from assets, for the 12-month period following the effective date of initial determination or reexamination of income, exclusive of income that is temporary, nonrecurring or sporadic as defined in paragraph (c) of this section, and exclusive of certain other types of income specified in paragraph (d) of this section.

(b) Annual income includes, but is not limited to: (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of $5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate as determined by HUD;

(4) The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment;

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (c)(3) of this section);

(6) *Welfare assistance.* If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of: (i) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities, plus (ii) the maximum amount that the welfare assistance agency could, in fact, allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (b)(6)(ii) shall be the amount resulting from one application of the percentage;

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (but see paragraph (c)(7) of this section); and

(9) Any earned income tax credit to the extent it exceeds income tax liability.

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children;

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide;

(6) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran, for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation and miscellaneous personal expenses of the student. Any amount of such scholarships or payments to a veteran not used for the above purposes that is available for subsistence is to be included in income;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8)(i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS); or

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(9) Temporary, nonrecurring or sporadic income (including gifts); or

(10) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937. A notice will be published in the **Federal Register** and distributed to PHAs and IHAs identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

(d) If it is not feasible to anticipate a level of income over a 12-month period, the income anticipated for a shorter period may be annualized subject to a redetermination at the end of the shorter period.

§ 905.325 Total tenant payment—rental and Turnkey III Projects.

(a) *Total Tenant Payment for Families Whose Initial Lease Is Effective On or After August 1, 1982.* Total tenant payment shall be the highest of the following, rounded to the nearest dollar:

(1) 30 percent of monthly adjusted income;

(2) 10 percent of monthly income; or

(3) If the family receives welfare assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the monthly portion of such payments which is so designated. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (a)(3) shall be the amount resulting from one application of the percentage.

(b) *Utility reimbursement.* If the utility allowance exceeds the total tenant payment, the utility reimbursement shall be paid to the family. If the family and the utility company consent, an IHA may pay the utility reimbursement jointly to the family and the utility, or directly to the utility company.

§ 905.330 Mutual help required monthly payments.

(a) *Establishment of schedule.* (1) Each homebuyer shall be required to make a monthly payment ("required monthly payment"), in accordance with a schedule determined by the IHA and approved by HUD. The schedule will provide that the minimum required monthly payment equal the administration charge.

(2) Subject to the requirement for payment of at least the administration charge, each homebuyer shall pay an amount of required monthly payment computed by: (i) Multiplying adjusted income by a specified percentage; and (ii) subtracting from that amount the utility allowance determined for the unit. The specific percentage shall be no less than 15 percent and no more than 30 percent, as determined by the IHA and approved by HUD.

(3) The IHA's schedule may provide that the required monthly payment shall not be more than a maximum amount. The maximum shall not be less than the sum of:

(i) The administration charge; and

(ii) The monthly debt service amount shown on the homebuyer's purchase price schedule.

(4) If the "required monthly payment" exceeds the administration charge, the amount of the excess shall be credited to the homebuyer's equity account (see § 905.450(a)).

(b) *Administration charge.* The administration charge must cover:

(1) The administrative costs (e.g., salaries, payroll taxes, travel; legal expense; postage; telephone and telegraph; office supplies; office space, maintenance and utilities for office space; and accounting services), operating reserve requirements (§ 905.440), and general expenses allocated per unit; and

(2) Unit-specific costs, such as premiums for hazard insurance, payments in lieu of taxes, if any, and a contribution to the nonroutine maintenance account to cover major expenses based on the size and type of unit.

(c) *Utilities.* The homebuyer shall furnish utilities for the home. However, if the IHA determines that the homebuyer is unable to pay for the utilities and that this inability creates conditions hazardous to life, health or safety of the occupants or threatens immediate, serious damage to the property, the IHA may pay for the utilities and charge the homebuyer's account for doing so.

(d) *Adjustments in the amount of the required monthly payment.* (1) After the initial determination of a homebuyer's required monthly payment, the IHA shall increase or decrease the amount of such payment in accordance with HUD regulations to reflect changes in adjusted income (pursuant to a reexamination by the IHA), adjustments in the administration charge, or in any of the other factors affecting computation of the homebuyer's required monthly payment.

(2) In order to accommodate wide fluctuations in required monthly payments due to seasonal conditions, an IHA may agree with any homebuyer for payments to be made in accordance with a seasonally adjusted schedule which assures full payment of the required amount for each year.

(e) *Old mutual help.* See § 905.315(b).

§ 905.335 Rent and homebuyer payment collection policy.

Each IHA shall adopt and promulgate, and use its best efforts to obtain compliance with, rules or regulations sufficient to assure the prompt payment and collection of rents and required homebuyer payments. A copy of the rules or regulations shall be posted prominently in the IHA office, and shall be provided to a tenant or homebuyer upon request. Such rules or regulations must be in accordance with HUD guidelines and approved by the HUD field office.

§ 905.340 Grievance procedures and leases.

(a) *Grievance procedures.* (1) Each IHA shall adopt and promulgate grievance procedures that are appropriate to local circumstances. These procedures shall comply with the Indian Civil Rights Act, if applicable, and shall assure that tenants and homebuyers will:

(i) Be advised of the specific grounds of any proposed adverse action by the IHA;

(ii) Have an opportunity for a hearing before an impartial party upon timely request;

(iii) Have an opportunity to examine any documents or records or regulations related to the proposed action;

(iv) Be entitled to be represented by another person of their choice at any hearing;

(v) Be entitled to ask questions of witnesses and have others make statements on their behalf; and

(vi) Be entitled to receive a written decision by the IHA on the proposed action.

(2) An IHA may exclude from its procedure any grievance concerning an eviction or termination of tenancy in any jurisdiction which requires that, before eviction, a tenant (including a homebuyer under a homeownership agreement) be given a hearing in court, if the Secretary has determined that the jurisdiction's procedures provide the basic elements of due process.

(3) A copy of the grievance procedures shall be posted prominently in the IHA office, and shall be provided to any tenant, homebuyer, or applicant upon request.

(b) *Leases.* Each IHA shall use leases that:

(1) Do not contain unreasonable terms and conditions;

(2) Obligate the IHA to maintain the project in a decent, safe, and sanitary condition;

(3) Require the IHA to give adequate written notice of termination of the lease which shall not be less than—

(i) A reasonable time, but not to exceed 30 days, when the health or safety of other tenants or IHA employees is threatened;

(ii) Fourteen days in the case of nonpayment of rent; and

(iii) Thirty days in any other case.

(4) Require that the IHA may not terminate the tenancy except for serious or repeated violation of the terms or conditions of the lease or for other good cause.

§ 905.345 Maintenance and improvements.

(a) *General.* Each IHA shall adopt and promulgate, and use its best efforts to obtain compliance with, rules or regulations to assure full performance of the respective maintenance responsibilities of the IHA and tenants or homebuyers. A copy of such rules or regulations shall be posted prominently in the IHA office, and shall be provided to a tenant or homebuyer upon request.

(b) *Provisions for rental projects.* For rental projects, the maintenance rules or regulations shall contain provisions on at least the following subjects:

(i) The responsibilities of tenants for normal care and maintenance, if any, of their dwelling units and common property;

(ii) Procedures for handling maintenance service requests from tenants;

(iii) Procedures for IHA inspections of dwelling units and common property;

(iv) Special arrangements, if any, for obtaining maintenance services from outside workers or contractors; and

(v) Procedures for charging tenants for damages for which they are responsible.

(c) *Provisions for MH and Turnkey III Projects.* For MH and Turnkey III Projects, the maintenance rules or regulations shall contain provisions on at least the following subjects:

(i) The responsibilities of homebuyers for maintenance and care of their dwelling units and common property;

(ii) For Turnkey III Projects only, procedures for handling services requests from homebuyers for nonroutine maintenance;

(iii) Procedures for providing advice and technical assistance to homebuyers to enable them to meet their maintenance responsibilities;

(iv) Procedures for IHA inspections of homes and common property;

(v) Procedures for IHA performance of homebuyer maintenance responsibilities (where homebuyers fail to satisfy such responsibilities) including procedures for charging the homebuyer's proper account for the cost thereof;

(vi) Special arrangements, if any, for obtaining maintenance services from outside workers or contractors; and

(vii) Procedures for charging homebuyers for damage for which they are responsible.

(d) *IHA responsibility in MH and Turnkey III Projects.* The IHA shall enforce those provisions of a Homebuyer's Agreement under which the homebuyer is responsible for maintenance of the home. The IHA has overall responsibility to HUD for assuring that the housing is being kept in decent, safe and sanitary condition, and that the home and grounds are maintained in a manner that will preserve their condition, normal wear and tear excepted. Failure of a homebuyer to meet the obligations for maintenance shall not relieve the IHA of responsibility in this respect. Accordingly, the IHA shall conduct a complete interior and exterior examination of each home at least once a year, and shall furnish a copy of the inspection report to the homebuyer. The IHA shall take appropriate action, as needed, to remedy conditions shown by the inspection, including steps to assure performance of the homebuyer's obligations under the Homebuyer's Agreement.

§ 905.350 Procurement and administration of supplies, materials, and equipment.

(a) Each IHA shall adopt and promulgate, and shall comply with, rules or regulations for the procurement and administration of supplies, materials, and equipment, which shall contain provisions on at least the following subjects:

(1) Procedures for purchasing in cases where competitive bidding is required;

(2) Identification (by position title) of IHA officials authorized to make purchases when competitive bidding is not required, and procedures for making such purchases;

(3) Procedures for inventory control;

(4) Procedures for storage and protection of goods and supplies; and

(5) Procedures for issuance of or other disposition of supplies and equipment. A copy of such rules or regulations shall be promptly furnished to HUD.

(b) In the purchasing of equipment, materials, and supplies, and in the award of contracts for services or for repairs, maintenance and replacements, the IHA shall comply with all applicable laws, and in any event shall make such purchases and award contracts only to the lowest responsible bidder after advertising a sufficient time in advance for proposals, except:

(1) When the amount involved does not exceed an amount prescribed from time to time by HUD;

(2) When the exigencies require immediate delivery of the articles or performance of the service;

(3) When only one source of supply is available and the purchasing or contracting officer of the IHA has so certified; or

(4) When the services required are:

(i) Of a technical or professional nature;

(ii) To be performed under the IHA supervision and paid for on a time basis; or

(iii) As provided in paragraph (d) of this section regarding purchasing through the Consolidated Supply Program.

(c) The provisions of § 905.120 and § 905.230, concerning Indian preference, shall apply to all contracts in connection with the operation of a project, and all procurement policies and procedures must be consistent with Indian preference requirements.

(d)(1) HUD provides technical assistance to IHAs in purchasing certain supplies, materials, and equipment and services necessary in the development, operation, and maintenance of lower income housing under a Consolidated Supply Program. Under this program, HUD enters into and administers Consolidated Supply Contracts (CSCs) for the voluntary use of the IHAs. IHAs may make purchases for supply items through CSCs between HUD and a contractor without prior HUD approval. A CSC specifies the price and terms under which a purchase can be made from the contractor by HUD or an IHA.

(2) If there are two or more CSCs covering items supplied under the same specification and the CSCs provide for a price differential, the IHA shall place a justification in its procurement files if it proposes to make its purchase from any contractor other than the one offering the lowest price.

(3) Purchases under CSCs by IHAs shall be made through IHA issuance of its purchase order directly to the contractor.

(4) If the IHA invites competitive bids for procurement of a CSC item or proposes to negotiate for procurement of such an item, the CSC contractors shall be included in such invitations or negotiations.

§ 905.355 Contracts for personal services and repairs.

(a) *Personal services contracts.* Where HUD has determined that an IHA has superior administrative capability (see § 905.145), HUD may authorize the IHA to negotiate and enter into contracts for personal, management, or legal services in connection with operation of a project without HUD approval. HUD will monitor IHA performance of this function, to assure satisfactory contracting and contract management practices, and may at any time rescind such authorization or impose additional requirements on the IHA as a condition of continued authorization.

(b) *Limitations on personal services contracting.* Unless specifically authorized under paragraph (a), an IHA shall not without the prior written approval of HUD enter into, execute, or approve any agreement or contract for personal, management, legal, or other services with any person or firm:

(1) Where the initial term of the agreement or contract (including renewal) is in excess of two years; or

(2) Where the amount of the agreement or contract is in excess of the amount included for such purpose in the HUD-approved development cost budget, or operating budget or an amount specified from time to time by HUD, as the case may be; or

(3) Where the agreement or contract is for legal or other services in connection with litigation.

(c) *Indian preference in contracting and wage rates.* For Indian preference requirements, see §§ 905.120 and 905.230. For requirements concerning wage rates applicable to maintenance laborers and mechanics employed in the operation of the project, see § 905.125(c).

(d) *Contracts for repairs.* The IHA shall submit for HUD approval complete construction and bid documents before inviting bids, or certify receipt of the required architect's/engineer's certification that the construction documents accurately reflect HUD-approved repairs, and that the bid documents are complete and include all mandatory items. The IHA shall obtain HUD approval of the proposed award of contracts for repairs, construction, and/or related equipment if the bid amount exceeds the HUD-approved budget amount or the IHA receives a single bid. In all other instances, the IHA shall comply with HUD requirements either to submit the proposed award for HUD approval, or if authorized to proceed without specific HUD approval, to make the award after the IHA has certified:

(1) That the bidding and awarding procedures were conducted in compliance with State, tribal, or local laws and Federal requirements, including Indian preference in contracting and wage rates;

(2) That the award does not exceed the approved budget amount and is not being made on the basis of a single bid; and

(3) That HUD clearance has been obtained for the award under previous participation procedures, including absence from the HUD consolidated list of debarred, suspended or ineligible contractors and grantees.

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§ 905.360 Correction of management deficiencies.

The IHA shall promptly take such action as may be required by HUD to remedy management deficiencies. Particular attention shall be given to the correction of serious deficiencies in any of the following:

(a) Physical maintenance of the property;

(b) Occupancy practices;

(c) Maintenance of accounts and records;

(d) Cost controls;

(e) Handling of funds;

(f) Rent or homebuyer payment collection;

(g) Required reports to HUD;

(h) IHA staffing and staff turnover; and

(i) Tribal government cooperation.

HUD shall provide the maximum feasible assistance to an IHA to remedy management deficiencies.

§ 905.365 Tenant participation and management.

It is HUD's policy to encourage tenant participation in the management of Indian housing and tenant management of Indian housing, where feasible. An IHA, at its discretion and subject to the availability of funds, may provide reasonable in-kind and cash assistance for tenant participation and tenant management activities. In addition to, or in lieu of, IHA operating funds, Comprehensive Improvement Assistance Program (CIAP) funds may be requested by an IHA to assist in developing or improving tenant management capabilities as part of management improvements under comprehensive modernization. (See Subpart G.)

Subpart D—Mutual Help Homeownership Opportunity Program

§ 905.401 Scope and applicability.

(a) *Scope.* This subpart sets forth the requirements applicable to the MH Homeownership Opportunity Program. For any matter not covered in this subpart, see the provisions of Subparts A, B, C, F, G, I, J and K of this part.

(b) *Applicability.* The provisions of this subpart shall be applicable to all MH projects placed under ACC on or after the effective date of this part, and any projects converted in accordance with § 905.480 or § 905.485.

§ 905.405 Program framework.

(a)(1) An MH project involves three basic contracts: an ACC, and MHO Agreement and a Construction Contract, each in the form prescribed by HUD.

(2) The ACC for MH projects shall be in the form prescribed by HUD for such projects. Projects under this form of ACC shall not be consolidated with projects under other forms of ACC.

(3) HUD shall specify the interest rate to be used to determine the purchase price schedule.

(b) The development cost shall be financed as determined by HUD.

§ 905.410 Special provisions for development of an MH project.

(a) *Application for Project.* An application for an MH project shall include a certification that there is a sufficient number of eligible homebuyers. (See paragraph (g) of this section.)

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(b) *Purchase of Sites.* An IHA may purchase a homesite if neither the tribe nor the homebuyers can donate or contribute enough sites suitable for project use.

(c) *Availability of Sites for Use by Another Homebuyer.* Each homesite shall be legally and paracticably available for use by another homebuyer. If site is part of other land owned by the prospective homebuyer, the lease or other conveyance to the IHA shall include the legal right of access to the site by any substitute homebuyer.

(d) *Alternative Sites and Substitution of Sites.* (1) In order to minimize delay to the project in the event of the withdrawal of a selected homebuyer or an approved site, the IHA should have a reasonable number of alternates available; and

(2) No substitution of a site shall be permitted after final site approval unless the change is necessary by reason of special circumstances and has been approved by HUD.

(e) *MH Construction Contracts*—(1) *Special provisions to be Included in Advertisements.* The advertisement for

an MH construction contract shall state that:

(i) The project is an MH project,

(ii) The contractor may obtain a copy of the proposed MH construction contract and form of MHO Agreement, and

(iii) The contractor may obtain a list of the HUD-approved sites.

(2) *Responsibility of Contractor.* The construction contract shall provide that the contractor is responsible for acceptable completion of all the homes.

(f) *Consultation with Homebuyers.* The IHA shall be responsible for determining the extent to which homebuyers or their representatives should be given an opportunity to comment on the planning and design of the homes. Any changes resulting from such consultation shall be consistent with HUD standards and cost limitations and shall be subject to IHA and HUD approval.

(g) *Execution of MHO Agreement.* MHO Agreements shall be executed promptly after HUD approval of the IHA development program.

(h) *Financial Feasibility.* The application shall be supported by signed applications of a sufficient number of selected homebuyers who are able and willing to pay the projected administration charge, meet the other obligations under MHO Agreements (see § 905.415(b)), and enter into MHO Agreements.

(i) *Rights Under MHO Agreement if Project Fails to Proceed.* Any MHO Agreement shall be subject to revocation by the IHA if the IHA or HUD decides not to proceed with the development of the project in whole or in part. In such event, any contribution made by the homebuyer or tribe shall be returned.

(j) *Mutual Help Contribution.* See § 905.420.

(k) *Insurance.* The homebuyer is responsible for payment of insurance coverage as part of its administration charge (see § 905.330(b)).

§ 905.415 Selection of MH homebuyers.

(a) *Admission Policies.* In adopting admission regulations, in accordance with § 905.301, an IHA may establish admission policies for MH projects different from those for rental or Turnkey III projects of the IHA.

(b) *Ability to Meet Homebuyer Obligations.* A family shall not be selected for MH housing unless, in addition to meeting the income limits and other requirements for admission (see § 905.301), the family is able and willing to meet all obligations of an MHO Agreement, including the obligations to perform or provide the required maintenance, to provide the required MH Contribution and its own utilities, and to pay the administration charge. A family may be selected even if the administration charge alone would exceed 30 percent of the family's monthly adjusted income, if the family can be expected to pay the administration charge and meet its other obligations under the MHO Agreement (e.g., as demonstrated by the family's income, including per capita or other payments that are not included in payment calculations, the family's past history, or the family's ability to supplement its income by providing its own food, fuel, or other necessities).

(c) *MH Waiting List.* (1) Families who wish to be considered for selection for MH housing shall apply specifically for such housing. A family on any other IHA waiting list, or a tenant in a rental project of the IHA, must also submit an application for selection in order to be considered for an MH project; and

(2) The IHA shall maintain a waiting list, separate from any other IHA waiting list, of families that have applied for MH housing and that have been determined to meet the admission requirements. The IHA shall maintain an MH waiting list in accordance with requirements prescribed by HUD.

(d) *Selection and Notification of Homebuyers.* (1) Selections of MH homebuyers shall be made promptly from the waiting list after HUD approval of the project application.

(2) The IHA shall give families prompt written notice of whether or not they have been selected. If not selected, the family must be informed of the basis for the determination and of its right to an informal hearing by the IHA on the determination, if requested. Such a hearing should be held within a reasonable time, as specified in the IHA's notice to the family.

(e) *Principal Residence.* A condition for selection as a homebuyer is that the family agrees to use the home as their principal residence during the term of the MHO Agreement. The acquisition of ownership of another home or failure to continue to use the MH home as the principal residence may constitute grounds for termination of the MHO.

§ 905.420 MH contribution.

(a) *Amount and Form of Contribution.* As a condition of occupancy, the MH homebuyer will be required to provide an MH contribution.

(1) The amount of the contribution must be $1500.

(2) The MH contribution may consist of land, labor, materials or any combination thereof. Contributions in the form of land must be owned in fee simple by the homebuyer or must be assigned or allotted to the homebuyer for his or her use before application for an MH unit. Contributions of land donated by a tribe or by another person on behalf of the homebuyer do not satisfy the requirement for an MH contribution. A homebuyer may provide cash to satisfy the MH contribution requirement where the cash is used for the purchase of land, labor or materials for the homebuyer's home.

(3) The amount of credit for an MH contribution in the case of land, labor or materials shall be based upon the market value at the time of the contribution, but in no case will the credit exceed $1500. In the case of labor or materials, market value shall be determined by the contractor and the IHA. In the case of land, market value shall be determined by appraisal in accordance with § 905.250. The use of labor and materials as MH contributions must be reflected by a reduction in the Total Contract Price stated in the Construction Contract and the amount must be approved by HUD.

(b) *Execution of Agreements.* Before execution of the construction contract for the project, MHO Agreements must be signed for all units. Land leases must be signed and approved by BIA before construction start. The MHO Agreement must include the homebuyer's agreement to satisfy the MH contribution requirement before occupancy of the unit.

(c) *Total Contribution to be Furnished Before Occupancy.* The homebuyer cannot occupy the unit until provision of the entire MH contribution to the IHA. If the homebuyer is unable or unwilling to provide the MH contribution before occupancy of the project, the MHO Agreement for the homebuyer shall be terminated, any MH contribution paid by the homebuyer shall be refunded in accordance with § 905.430, and the IHA shall select a substitute homebuyer from its waiting list.

(d) *MH Contribution in Event of Substitution of Homebuyer.* If an MHO Agreement is terminated and a substitute homebuyer is selected, the amount of MH contribution to be provided by the substitute homebuyer shall be in accordance with paragraph (a) of this section. The substitute homebuyer may not occupy the unit until the complete MH contribution has been made.

(e) *Disposition of Contribution.* If an MHO Agreement is terminated by the IHA or the homebuyer before the date of occupancy, the homebuyer may receive reimbursement of the value of the MH contribution made plus any other funds

contributed to the equity account by the homebuyer.

§ 905.425 Commencement of occupancy.

(a) *Notice.* (1) Upon acceptance by the IHA from the contractor of the home as ready for occupancy, the IHA shall determine whether the homebuyer has met all requirements for occupancy, including payment in full of the MH contribution, and fulfillment of mandatory homebuyer counseling requirements. The IHA shall notify the homebuyer in writing that the home is available for occupancy as of a date specified in the notice, which is called the date of occupancy.

(2) If the IHA determines that the homebuyer has not fully provided the MH contribution or met any of the other conditions for occupancy by the date of occupancy, the homebuyer shall be sent a notice in writing. This notice must specify the date by which all requirements must be satisfied and shall advise the homebuyer that the MHO Agreement will be terminated and a substitute homebuyer selected for the unit if the requirements are not satisfied. (See § 905.465 and § 905.420(d).)

(b) *Credits to MH Equity Account.* Promptly after the date of occupancy, the IHA shall credit the amount of the MH contribution to the homebuyer's equity account in accordance with § 905.450 and shall give the homebuyer a statement of the amounts so credited.

§ 905.430 Inspections, responsibility for items covered by warranty.

(a) *Inspection Before Move-In and Identification of Warranties.* (1) To establish a record of the condition of the home on the date of occupancy, an inspection of the home by the IHA and the homebuyer shall be made as close as possible to, but not later than, the date of occupancy. (The record of this inspection shall be separate from the certificate of completion required by § 905.265(f), but the inspections may, if feasible, be combined.) After the inspection, the IHA inspector shall give the homebuyer a written statement, signed by the inspector, of the condition of the home and equipment. The homebuyer shall sign a copy of the statement, acknowledging concurrence or stating objections; and any differences shall be resolved by the IHA.

(2) On or before commencement of occupancy of each home, the IHA shall furnish the homebuyer with a list of applicable contractors', manufacturers' and suppliers' warranties, indicating the items covered and the periods of the warranties.

(b) *Inspections During Contractors' Warranty Periods. Responsibility for Items Covered by Contractors', Manufacturers' or Suppliers' Warranties.* In addition to the inspection required under paragraph (a) of this section, the IHA will inspect the home regularly in accordance with paragraph (c). However, it shall be the responsibility of the homebuyer during the period covered by § 905.270 and subsequently for the duration of the applicable warranties, to promptly inform the IHA in writing of any deficiencies arising during the warranty period (including manufacturers' and suppliers' warranties) so that the IHA may enforce any rights under the applicable warranties. If a homebuyer fails to furnish such a written report in time, and the IHA is subsequently unable to obtain redress under the warranty, correction of the deficiency shall be the responsibility of the homebuyer.

(c) *Inspection Upon Termination of Agreement.* If the MHO Agreement is terminated for any reason after commencement of occupancy, the IHA shall inspect the home after notifying the homebuyer of the time for inspection and shall give the homebuyer a written statement of the cost of any maintenance work required to put the home in satisfactory condition for the next occupant (see § 905.465).

(d) *Homebuyer Permission for Inspections; Participation in Inspections.* The homebuyer shall permit the IHA to inspect the home at reasonable hours and intervals during the period of the MHO Agreement in accordance with rules established by the IHA. The homebuyer shall be notified of the opportunity to participate in the inspection made in accordance with this section.

§ 905.435 Maintenance, utilities, and use of home.

(a) *Maintenance*—(1) *Homebuyer's Responsibility for Maintenance.* The homebuyer shall be responsible for maintenance of the home, including all repairs and replacements (including those resulting from damage from any cause). The IHA shall not be obligated to pay for or provide any maintenance of the home other than the correction of warranty items reported during the applicable warranty period.

(2) *Homebuyer's Failure to Perform Maintenance.* (i) Failure of the homebuyer to perform maintenance obligations constitutes a breach of the MHO Agreement. In accordance with § 905.345(d), the IHA performs inspections at least once a year. Upon a determination by the IHA that the homebuyer has failed to perform its maintenance obligations, the IHA shall require the homebuyer to agree to a specific plan of action to cure the breach and to assure future compliance. The plan shall provide for maintenance work to be done within a reasonable time by the homebuyer, with such use of the homebuyer's equity account as may be necessary, or to be done by the IHA and charged to the homebuyer's equity account. If the homebuyer fails to carry out the agreed-to plan, the MHO Agreement shall be terminated in accordance with § 905.465.

(ii) If the IHA determines that the condition of the property creates a hazard to the life, health, or safety of the occupants, or if there is an immediate risk of serious damage to the property if the condition is not corrected, the corrective work shall be done promptly by the IHA with such use of the homebuyer's nonroutine maintenance account as the IHA may determine to be necessary, or by the IHA with a charge of the cost to the homebuyer's equity account in accordance with § 905.450(d).

(iii) Any maintenance work performed by the IHA shall be accounted for through a work order stating the nature of and charge for the work. The IHA shall give the homebuyer copies of all work orders for the home.

(b) *Homebuyer's Responsibility for Utilities.* The homebuyer is responsible for the cost of furnishing utilities for the home. The IHA shall have no obligation for the utilities. However, if the IHA determines that the homebuyer is unable to provide utilities for the home, and that this inability creates conditions that are hazardous to life, health, or safety of the occupants or threaten immediate serious damage to the property, the IHA may provide the utilities on behalf of the homebuyer and charge the homebuyer's equity account for the costs.

(c) *Obligations With Respect to Home and Other Persons and Property.* The homebuyer shall agree to abide by all provisions of the MHO Agreement concerning homebuyer responsibilities, occupancy and use of the home.

(d) *Structural Changes.* (1) A homebuyer shall not make any structural changes in or additions to the home unless the IHA has first determined in writing that such changes would not:

(i) Impair the value of the home, the surrounding homes, or the project as a whole;

(ii) Affect the use of the home for residential purposes; or

(iii) Violate HUD requirements as to construction and design.

(2) Additions to the home include, but are not limited to, energy conservation items such as solar panels, wood-burning stoves, flues and insulation. Any changes made in accordance with this section shall be at the homebuyer's expense (and not from any account created under the MHO Agreement), and in the event of termination of the MHO Agreement the homebuyer shall not be entitled to any compensation for such changes or additions.

§ 905.440 Operating reserve.

(a) The IHA shall maintain an operating reserve for the project in an amount sufficient for working capital purposes, for estimated future nonroutine requirements for IHA-owned administrative facilities and common property, for the payment of advance premiums (usually three years) for insurance, and for unanticipated project requirements approved by HUD. A contribution for this reserve shall be determined by the IHA with the approval of HUD and included in the administration charge. The amount of this contribution shall be increased or decreased annually to reflect the needs of the IHA for working capital and for reserves for anticipated future expenditures and shall be included in the operating budget submitted to HUD for approval.

(b) At the end of each fiscal year or other budget period, the project operating reserve shall be:

(1) Credited with the amount by which operating receipts exceed operating expenses of the project for the budget period, or

(2) Charged with the amount by which operating expenses exceed operating receipts of the project for the budget period, to the extent of the balance in the operating reserve.

§ 905.445 Operating subsidy.

(a) *Scope.* This section authorizes the use of operating subsidy for Mutual Help projects; establishes eligible costs; and provides for determination of operating subsidy on a uniform basis for all MH projects, including existing projects whether or not converted in accordance with § 905.480.

(b) *Eligible Costs.* The reasonable cost of an annual independent audit is an eligible cost for operating subsidy. Operating subsidy may also be paid to cover proposed expenditures approved by HUD for the following purposes:

(1) Administration charges for vacant units where the IHA submits evidence to HUD's satisfaction that it is making every reasonable effort to fill the vacancies;

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(2) Collection losses due to payment delinquencies of administration charges on the part of homebuyer families who MHO Agreements have been terminated and who have vacated the home, and the actual cost of any maintenance (including repairs and replacements) necessary to put the vacant home in a suitable condition for a subsequent homebuyer family. Operating subsidy may be made available for these purposes only after the IHA has previously used all available homebuyer credits. Every reasonable effort shall be made to collect charges from a vacated homebuyer, including court judgments, professional collection services, etc., as appropriate. Any collections shall be repaid to HUD upon collection;

(3) The costs of HUD-approved homebuyer counseling program(s) but not in duplication of homebuyer counseling cost funded under a development cost budget (in accordance with Subpart B);

(4) HUD-approved costs for training of IHA staff and Commissioners;

(5) Reimbursement to a homebuyer pursuant to § 905.420(e)—but only if no other source of funds is available;

(6) Operating costs resulting from other unusual circumstances justifying payment of operating subsidy, if approved in advance by HUD.

(c) *Ineligible Costs.* No operating subsidy shall be paid for utilities, maintenance, or other items for which the homebuyer is responsible except, as necessary, to put a vacant home in condition for a subsequent family as provided in paragraph (b)(2) of this section.

§ 905.450 Homebuyer accounts.

(a) *Equity Account.* The IHA shall establish an equity account for each homebuyer effective on the date of occupancy. This account represents a homebuyer's interest in funds that may be used to purchase the home at the option of the homebuyer. It does not represent any equitable interest in the home itself. The IHA shall credit this account with the homebuyer's MH contribution.

(1) The IHA shall, as provided in § 905.330(a)(4), credit this account with the amount by which each required monthly payment exceeds the administration charge. In addition, the IHA shall credit this account with the amounts of any periodic or occasional voluntary payments (in excess of required monthly payment) that the homebuyer may desire to make to acquire ownership of the home within a shorter period of time.

(2) Funds held by the IHA in the equity accounts of all the homebuyers in the project shall be invested in HUD-approved investments. Income earned on the investments of such funds shall periodically, but at least annually, be prorated and credited to each homebuyer's equity accounts in proportion to the amount in each such account on the date of proration.

(3) If the IHA has routine maintenance done in accordance with § 905.435(a)(2), the cost thereof shall be charged to the homebuyer's equity account.

(b) *Nonroutine Maintenance Account.* (1) The IHA shall established a nonroutine maintenance account for each home effective on the date of occupancy. The IHA shall credit this account with the amount determined to be applicable to the unit that is included in the home's monthly administration charge. The homebuyer can incur expenses for nonroutine maintenance to be charged to this account, in accordance with IHA policy. If the IHA has nonroutine maintenance work done in accordance with § 905.435(a)(2), the cost thereof shall be charged to the home's nonroutine maintenance account.

(2) Funds held by the IHA in the nonroutine maintenance accounts of all the homes in the project shall be invested in HUD-approved investments. Income earned on the investments of such funds shall periodically, but at least annually, be prorated and credited to each home's nonroutine maintenance account in proportion to the amount in each such account on the date of proration.

(c) *Disposition of Accounts Upon Acquisition of Ownership.* When the homebuyer exercises his or her option to purchase the home, the balances in the homebuyer's equity and nonroutine maintenance accounts shall be disposed of in accordance with § 905.455(e).

(d) *Use of Accounts; Nonassignability.* The homebuyer shall have no right to receive or use the funds in any account except as provided in the MHO Agreement, and the homebuyer shall not without approval of the IHA and HUD, assign, mortgage or pledge any rights in the MHO Agreement or to any account.

§ 905.455 Purchase of home.

(a) *When Home May be Purchased.* The homebuyer may exercise his or here option to purchase the home on or after the date of occupancy, but only if the homebuyer has met all obligations under the MHO Agreement.

(b) *Purchase Price and Purchase Price Schedule.* (1) The IHA shall determine the initial purchase price of a home for the homebuyer who first occupies the home, pursuant to an MHO Agreement as follows (unless the IHA, after consultation with the homebuyer, has developed an alternative method of apportioning among the homebuyers, the amount determined in Step 1, and the alternative method has been a part of the HUD-approved development program):

(i) *Step 1:* From the estimated Total Development Cost (TDC) (including the full amount for contingencies as authorized by HUD) of the project as shown in the development cost budget in effect at the time of execution of the construction contract, deduct the amounts, if any, attributable to:

(A) Relocation costs,

(B) Counseling costs,

(C) The cost of any community, administration or management facilities, including the land, equipment, and furnishings attributable to such facilities as set forth in the development program for the project, and

(D) The total amount attributable to land for the project.

(ii) *Step 2:* Multiply the amount determined in Step 1 by a fraction of which the numerator is the development cost standard for the size and type of home being constructed for the homebuyer, and the denominator is the sum of the unit development cost standards for the homes of various sizes and types comprising the project.

(iii) *Step 3:* Determine the amount chargeable to development costs, if any, for acquisition of the homesite.

(iv) *Step 4:* Add the amount determined in Step 3 to the amount determined in Step 2. The sum determined under this step shall be the initial purchase price of the home.

(2) *Purchase Price Schedule.* Promptly after execution of the construction contract, the IHA shall furnish to the homebuyer a statement of the initial purchase price of the home, and a purchase price schedule that will apply, based on amortizing the balance (purchase price less the MH contribution) over a 25-year period at an interest rate prescribed by HUD.

(c) *Initial Purchase Price and Purchase Price Schedule for Subsequent Homebuyer.*—(1) *Determination of Initial Purchase Price.* The initial purchase price for a subsequent homebuyer shall be the lower of the current appraised value or the current replacement cost of the home, both as determined or approved by HUD.

(2) *Purchase Price Schedule.* Each subsequent homebuyer shall be provided with a purchase price schedule showing the amortization that will apply, based on amortizing the balance over a 25-year period at an interest rate prescribed by HUD. (This provision does not mean that the ACC is thereby extended beyond its original term.)

(d) *Notice of Eligibility for Financing.* The IHA shall, at the time of each examination or reexamination of the family's earnings and other income, determine among other things whether the homebuyer is eligible for IHA homeownership financing under § 905.460. If the IHA determines that the homebuyer is eligible, the IHA shall notify the homebuyer in writing that IHA homeownership financing is available to enable the homebuyer to purchase the home, if the homebuyer chooses not to purchase the home at that time, all the rights of a homebuyer shall continue (including the right to accumulate credits in the equity account) and all obligations under the MHO Agreement shall continue (including the obligations to make monthly payments based on income). The IHA may convey ownership of the home when the homebuyer exercises the option to purchase and has complied with all the terms of the MHO agreement. The homebuyer can exercise the option to purchase only by written notice to the IHA, in which the homebuyer specifies the manner in which the purchase price and settlement costs will be paid.

(e) *Conveyance of Home.*—(1) *Option to purchase.* The homebuyer may exercise the option to purchase the home when the amount in the equity account is sufficient to pay the balance of the purchase price, or when the amount in the equity account together with any other funds of the homebuyer of with IHA financing is sufficient to pay the purchase price.

(2) *Amounts to be paid.* The purchase price shall be the amount shown on the purchase price schedule for the month in which the settlement date falls.

(3) *Settlement Costs.* Settlement costs are the costs incidental to acquiring ownership, including the costs and fees for credit report, field survey, title examination, title insurance, inspections, attorneys other than the IHA's attorney, closing, recording, transfer taxes, financing fees and mortgage loan discount. Settlement costs shall be paid by the homebuyer who may use equity and/or escrow accounts available for the purchase in accordance with paragraph (e)(4) of this section.

(4) *Disposition of Equity Account.* When the homebuyer purchases the home, the net credit balances in the homebuyer's equity account (§ 905.450) shall be applied in the following order:

(i) If the IHA finances purchase of the home in accordance with § 905.460, first, for the initial payment for fire and extended coverage insurance on the home after conveyance;

(ii) For settlement costs, if the homebuyer so directs;

(iii) For the purchase price; and

(iv) The balance, if any, for refund to the homebuyer.

(5) *Disposition of Nonroutine Maintenance Account.* When the homebuyer purchases the home, the balance in the NRMA shall be transferred to the homebuyer for future nonroutine maintenance expenses.

(6) *Settlement.* A home shall not be conveyed until the homebuyer has met all the obligations under the MHO Agreement. The settlement date shall be mutually agreed upon by the parties. On the settlement date, the homebuyer shall receive the documents necessary to convey to the homebuyer the IHA's right, title, and interest in the home, subject to any applicable restrictions or covenants as expressed in such documents. The required documents shall be approved by the attorneys representing the IHA and HUD, and by the homebuyer or the homebuyer's attorney.

(7) *IHA Investment and Use of Purchase Price Payments.* After conveyance, all funds held or received by the IHA which are applied to payment of the purchase price of a home by a homebuyer or homeowner shall be held separate from other project funds, and shall be used for new housing development, or development of water and sewer facilities, or modernization or other capital costs, and shall be invested in accordance with HUD requirements. Such funds include the amount applied to payment of the purchase price from the equity account, any cash paid by the homebuyer for application to the purchase price and, if the IHA finances purchase of the home in accordance with § 905.460, any portion of the mortgage payments by the homeowner attributable to payment of the debt service (principal and interest) on the mortgage.

§ 905.460 IHA homeownership financing.

(a) *Eligibility.* The homebuyer shall be eligible for IHA homeownership financing when the IHA determines that:

(1) The homebuyer can pay:

(i) The amount necessary for settlement costs; and

(ii) The initial payment for fire and extended coverage insurance carried on the home after conveyance; and

(iii) Any amount required to bring the home's NRMA up to a balance of $1,500.

(2) The homebuyer's income has reached the level, and is likely to continue at such level, at which 30 percent of monthly adjusted income is at least equal to the sum of the monthly debt service amount shown on the homebuyer's purchase price schedule and the IHA's estimates, approved by HUD, of the following monthly payments and allowances:

(i) Payment for fire and extended coverage insurance;

(ii) Payment for taxes and special assessments, if any;

(iii) The IHA mortgage servicing charge;

(iv) Amount necessary for routine and nonroutine maintenance of the home; and

(v) Amount necessary for utilities for the home.

(b) *Promissory Note, Mortgage, and Mortgage Amortization Schedule.* (1) When IHA homeownership financing is utilized, the homebuyer shall execute and deliver a promissory note and mortgage. The mortgage shall be a first lien on the property, shall be in a form approved by HUD, shall be recorded by the IHA, and shall secure performance of all the terms and conditions of the promissory note. The principal amount of the promissory note shall be equal to the unpaid balance of the purchase price of the home as determined in accordance with §905.455.

(2) The IHA shall furnish the homebuyer a mortgage amortization schedule based on the amount of the promissory note. This schedule shall provide for monthly reductions in and complete amortization of the principal amount of the promissory note, and shall show the level monthly debt service amount needed to complete the amortization. The amortization period shall commence on the first day of the month following the date of settlement and shall end on the first day after the end of 25 years. The rate of interest shall be determined by HUD.

(c) *Insurance.* Fire and extended coverage insurance in an amount and on terms acceptable to HUD shall be obtained by the IHA, before settlement and shall be maintained until termination of the obligation under the mortgage. The homeowner shall make payments to the IHA to cover the cost of the insurance.

(d) *Disposition of Servicing Fees and Mortgage Debt Service.* The amount of the mortgage servicing fees collected from the homeowner under the promissory note may be retained by the IHA and utilized as project operating receipts.

§ 905.465 Termination of MHO agreement.

(a) *Termination Upon Breach.* In the event the homebuyer fails to comply with any of the obligations under the MHO Agreement, the IHA may terminate the MHO Agreement. Misrepresentation or withholding of material information in applying for admission or in connection with any subsequent reexamination of income and family composition constitutes a breach of the homebuyer's obligations under the MHO Agreement. "Termination", as used in the MHO Agreement, does not include acquisition of ownership by the homebuyer.

(b) *Notice of Termination of MHO Agreement by the IHA, Right of Homebuyer to Respond.* Termination of the MHO Agreement by the IHA for any reason shall be by written notice of termination. Such notice shall be in compliance with the terms of the MHO Agreement and, in all cases, shall afford a fair and reasonable opportunity to have the homebuyer's response heard and considered by the IHA. Such procedures shall comply with the Indian Civil Rights Act, if applicable, and shall incorporate all the steps and provisions needed to comply with state, local, or tribal law, with the least possible delay. (See § 905.340.)

(c) *Termination of MHO Agreement by Homebuyer.* The homebuyer may terminate the MHO Agreement by giving the IHA written notice in accordance with the Agreement. If the homebuyer vacates the home without notice to the IHA, the homebuyer shall remain subject to the obligations of the MHO Agreement, including the obligation to make monthly payments, until the IHA terminates the MHO Agreement in writing. Notice of the termination shall be communicated by the IHA to the homebuyer to the extent feasible and the termination shall be effective on the date stated in the notice.

(d) *Disposition of NRMA Upon Termination of the MHO Agreement.* If the MHO Agreement is terminated, the balance in the home's NRMA shall be disposed of as follows:

(1) The nonroutine maintenance account shall be charged with any nonroutine maintenance and replacement cost incurred by the IHA to put the home in satisfactory condition for the next occupant;

(2) The balance shall remain in the account for use by the subsequent homebuyer.

(e) *Disposition of Equity Account Upon Termination.* If the MHO agreement is terminated, the balance in the home's equity account shall be disposed of as follows:

(1) The equity account shall be charged with:

(i) The costs of any routine maintenance to put the unit in satisfactory condition;

(ii) Any amounts the homebuyer owes the IHA including required monthly payments; and

(iii) The required monthly payment for the period the home is vacant, not to exceed 30 days from the date of receipt of the notice of termination, or, if the homebuyer vacates the home without notice to the IHA, for the period ending with the effective date of termination by the IHA.

(2) If, after making the charges in accordance with paragraph (e)(1) of this section, there is a debit balance in the equity account, the homebuyer shall be required to pay the IHA the amount of the debit balance.

(3) If, after making the charges in accordance with paragraphs (e) (1) and (2) of this section, there is a credit balance in the equity account, the amount contributed by the homebuyer shall be refunded.

(f) *Settlement Upon Termination.*—(1) *Time for Settlement.* Settlement with the homebuyer following a termination shall be made as promptly as possible after all charges provided in paragraph (d) of this section have been determined and the IHA has given the homebuyer a statement of such charges. The homebuyer may obtain settlement before determination of the actual cost of any maintenance required to put the home in satisfactory condition for the next occupant, if the homebuyer is willing to accept the IHA's estimate of the amount of such cost. In such cases, the amounts to be charged for maintenance shall be based on the IHA's estimate of the cost thereof.

(2) *Disposition of Personal Property.* Upon termination, the IHA may dispose of any item of personal property abandoned by the homebuyer in the home, in a lawful manner deemed suitable by the IHA. Proceeds, if any, after such disposition, may be applied to the payment of amounts owed by the homebuyer to the IHA.

(g) *Responsibility of IHA to Terminate.*—(1) The IHA is responsible for taking appropriate action with respect to any noncompliance with the MHO agreement by the homebuyer. In cases of noncompliance that are not corrected as provided further in this paragraph, it is the responsibility of the IHA to terminate the MHO agreement in accordance with the provisions of this section and to institute eviction proceedings against the occupant.

(2) As promptly as possible after a noncompliance comes to the attention of the IHA, the IHA shall discuss the matter with the homebuyer and give the homebuyer an opportunity to identify any extenuating circumstances or complaints which may exist. A plan of action may be agreed upon that will specify how the homebuyer will come into compliance, as well as any actions by the IHA that may be appropriate. This plan shall be in writing and signed by both parties.

(3) Compliance with the plan shall be checked by the IHA not later than 30 days from the date thereof. In the event of refusal by the homebuyer to agree to such a plan or failure by the homebuyer to comply with the plan, the IHA shall issue a notice of termination of the MHO agreement and evict the homebuyer in accordance with the provisions of this section on the basis of the noncompliance with the MHO agreement.

(4) A record of meetings with the homebuyer, written plans of action agreed upon and all other related steps taken in accordance with paragraph (f) shall be maintained by the IHA for inspection by HUD.

§ 905.470 Succession upon death, mental incapacity or abandonment.

(a) *Definition of "Event."* "Event" means the death of, or mental incapacity of or abandonment of the home by, all of the persons who have executed the MHO agreement as homebuyers.

(b) *Designation of Successor by Homebuyer.* A homebuyer may designate as a successor only a person who, at the time of the designation, is a member of the homebuyer's family and is an authorized occupant of the home in accordance with the MHO agreement, or if the designation is made before completion of the home, is a member of the homebuyer's family and is scheduled to be an occupant when the home is completed. The designation shall be made at the time of execution of the MHO agreement and the homebuyer may, at any subsequent time, change the designation by written notice to the IHA, and designate another successor who meets the qualifications of this paragraph. The designated successor shall be entitled to succeed only if, at the time of the "event", he or she meets the conditions stated in paragraph (c) of this section.

(c) *Succession by Persons Designated by Homebuyer.* Upon occurrence of an "event", the person designated as the successor shall succeed to the former homebuyer's rights and responsibilities under the MHO agreement if the designated successor meets the following conditions:

(1) At the time of the event (i) the successor is a member of the homebuyer's family who is entitled to live in the home pursuant to the IHA's written approval, and (ii) in the case of an event occurring after commencement of occupancy by the homebuyer, the successor is living in the home;

(2) The successor is willing and able to pay the administration charge and to perform the obligations of a homebuyer under an MHO agreement; and

(3) The successor executes an assumption of the former homebuyer's obligations under the MHO agreement.

(d) *Designation of Successor by IHA.* If at the time of the event there is no successor designated by the homebuyer, or if any of the conditions in paragraph (c) of this section are not met by the designated successor, the IHA may designate as successor any family member who meets all of the conditions of paragraph (c) of this section.

(e) *Occupancy by Appointed Guardian.* If at the time of the event there is no qualified successor designated by the homebuyer or by the IHA in accordance with the foregoing paragraphs of this section, and a minor child or children of the homebuyer are living in the home, the IHA may, in order to protect their continued occupancy and opportunity for acquiring ownership of the home, approve as occupant of the home an appropriate adult who has been appointed legal guardian of the children with a duty to perform the obligations of the MHO agreement in their interest and behalf.

(f) *Succession and Occupancy on Trust Land.* In the case of a home on trust land subject to restrictions on alienation under Federal or state law (including Federal trust or restricted land and land subject to trust or restriction under state law), a person who is prohibited by law from succeeding to the IHA's interest on such land may, nevertheless, continue in occupancy with all the rights, obligations and benefits of the MHO agreement, modified to conform to these restrictions on succession to the land.

(g) *Termination in Absence of Qualified Successor.* If there is no qualified successor in accordance with the IHA's approved policy, the IHA shall terminate the MHO agreement and select a subsequent homebuyer to occupy the unit under a new MHO agreement. If a new homebuyer is unavailable or if the home cannot continue to be used for lower income housing in accordance with the Mutual Help program, the IHA may submit an application to HUD to approve a disposition of the home, in accordance with Subpart K. In the case of homes on trust land, resale to the original lessor may be in the best interests of the IHA and the Government and may justify a negotiated sale of the home.

§ 905.475 Miscellaneous.

(a) *Annual Statement to Homebuyer.* The IHA shall provide an annual statement to the homebuyer that sets forth the amount in the homebuyer equity account and nonroutine maintenance account at the end of each IHA fiscal year. The statement shall also set forth the remaining balance of the purchase price.

(b) *Insurance Before Transfer of Ownership, Repair or Rebuilding.*—(1) *Insurance.* The IHA shall carry all insurance prescribed by HUD, including fire and extended coverage insurance upon the home.

(2) *Repair or Rebuilding.* In the event the home is damaged or destroyed by fire or other casualty, the IHA shall consult with the homebuyers as to whether the home shall be repaired or rebuilt. The IHA shall use the insurance proceeds to have the home repaired or rebuilt unless there is good reason for not doing so. In the event the IHA determines that there is good reason why the home should not be repaired or rebuilt and the homebuyer disagrees, the matter shall be submitted to HUD for final determination. If the final determination is that the home should not be repaired or rebuilt, the IHA shall terminate the MHO Agreement, and the homebuyer's obligation to make required monthly payments shall be deemed to have terminated as of the date of the damage or destruction.

(3) *Suspension of Payments.* In the event of termination of a MHO Agreement because of damage or destruction of the home, or if the home must be vacated during the repair period, the IHA will use its best efforts to assist in relocating the homebuyer. If the home must be vacated during the repair period, required monthly payments shall be suspended during the vacancy period.

(c) *Notices.* Any notices by the IHA to the homebuyer required under the MHO Agreement or by law shall be delivered in writing to the homebuyer personally or to any adult member of the homebuyer's family residing in the home, or shall be sent by certified mail, return receipt requested, properly addressed, postage prepaid. Notice to the IHA shall be in writing and either delivered to an IHA employee at the office of the IHA, or sent to the IHA by

certified mail, return receipt requested, properly addressed, postage prepaid.

(d) *Counseling of Homebuyers.* The IHA shall provide counseling to homebuyers to develop a full understanding by homebuyers of their responsibilities as participants in the MH project. Each homebuyer shall be required to participate in all official counseling activities, and failure without good cause to participate in the program, shall constitute a breach of the MHO Agreement.

§ 905.480 Conversion of existing mutual help projects.

(a) For all MH projects with ACCs executed on or before the effective date of this regulation, the IHA may convert the project to be consistent with this regulation. First the IHA shall obtain consent of all the homebuyers in the project (consent to be shown by signing of new MHO Agreement, including program revisions set forth in this regulation). Second, the IHA shall obtain HUD approval. Third, the IHA shall establish the required homebuyer accounts:

(1) *NRMA.* A new account to cover the costs of nonroutine maintenance during the period of the ACC.

(2) *Equity Account.* The Homebuyer's MEPA, VEPA, and refundable and nonrefundable reserves shall be consolidated into the new equity account.

(b) *Applicability of Regulations.* After conversion, all regulations set forth herein will apply to the project and the homebuyers. Projects that have not been converted will continue to operate under existing contracts and HUD regulations and procedures applicable on the date of the contracts.

§ 905.485 Conversion of rental projects to the MH program.

(a) *Applicability.* An IHA may apply to HUD for approval to convert any or all of the units in an existing rental project to the MH program.

(b) *Minimum Requirements.* (1) In order to be eligible for conversion, the units must be single family detached homes, have individually metered utilities, and be in decent, safe and sanitary condition. The project(s) which possess the proposed conversion units must have received an approved actual development cost certificate.

(2) Tenants or other applicants to be homebuyers of the proposed conversion units must qualify for the program under § 905.415(b). The entire MH contribution required of the homebuyer must be made before the rental unit occupied by a tenant can be converted to the MH Program.

(c) *Application Process.* The IHA's application must be in the form required by HUD, including all necessary documentation. The HUD office shall review the application for legal sufficiency; Tribal acceptance; demonstration of family interest; evidence units are habitable, safe and sanitary; family qualifications as discussed in paragraph (b)(2) of this section; and financial feasibility. Where not all units in a project are proposed for conversion, the IHA's ability to operate the remaining rental units may not be adversely affected.

Subpart E—Turnkey III Program

§ 905.501 Introduction.

(a) *Purpose.* This subpart sets forth the essential elements of the HUD Homeownership Opportunities Program for lower income families (Turnkey III). IHAs and families in Turnkey III units are encouraged to pursue homeownership through (1) transfer to the Mutual Help Program for those families that are in compliance with their Homeownership Agreements; (2) purchase of Turnkey III units by those families, if they are financially able to do so; or (3) continuation in the Turnkey III Program. If homeownership is not financially or practicably feasible, however, a family shall be transferred to the conventional rental program. IHAs are encouraged to consider the conversion of Turnkey III units to some other form of operation where compliance with the requirements of the Turnkey III Program has become infeasible.

(b) *Applicability.* This subpart is applicable to the operation of all Turnkey III Projects operated by IHAs.

(c) *Program Framework.* (1) All Turnkey III projects shall be operated in accordance with an executed Annual Contributions Contract (ACC), which includes the "Special Provisions for Turnkey III Homeownership Opportunity Project" and Homebuyer Ownership Opportunity Agreements between the IHA and the Homebuyer.

(2) A Turnkey III Project may only include units that are to be operated as such under Homebuyer Ownership Opportunity Agreements, including units occupied temporarily by former homebuyers who, as a result of losing homeownership potential, have been converted to rental status in place pending the availability of a suitable rental unit. If for any reason it is determined that certain units should be converted to operation as conventional rental units, Mutual Help units, or some other form of operation, such units must be made a part of a conventional rental project, Mutual Help project or such other project. However, when a homebuyer is converted to rental status while remaining in the same unit, pending availability of a satisfactory rental unit, the unit remains under the Turnkey III project.

(d) *Contracts, Agreements, Other Documents.* All contracts, agreements and other documents referred to in this subpart must be in a form approved by HUD and no changes of any kind may be made without the written approval of HUD. Contracts, agreements and other documents include but are not limited to:

(1) The Annual Contributions Contract (ACC), including the Special Provisions for Turnkey III Projects;

(2) The Homebuyer Ownership Opportunity Agreement (Turnkey III Agreement);

(3) Certification of Homebuyer Status;

(4) Promissory Note for Payment Upon Resale by Homebuyer at Profit;

(5) Articles of Incorporation and By-Laws of Homebuyer Association; and

(6) Recognition Agreement Between Indian Housing Authority and Homebuyer Association.

§ 905.503 Conversion of Turnkey III units and transfer of occupants.

(a) *General.* Turnkey III Project units may be converted to operation under the Mutual Help Homeownership Program or the Rental Program and the occupants of such units may be transferred to such other form of occupancy, subject to the requirements set forth in this section. In most cases, the conversion of Turnkey III units and the transfer of Turnkey III Homebuyers will require waiver of HUD regulations; accordingly, approval by the Assistant Secretary for Public and Indian Housing is required. This section is not applicable to the transfer of Turnkey III Homebuyers who are in breach or default of their Turnkey III Agreement; such cases are to be governed by the terms of the particular Turnkey III Agreement.

(b) *Conversion of Turnkey III Units.*— (1) *General Requirements Applicable to All Conversions.* (i) The conversion must be supported by the Board of Commissioners and the governing body of the Tribe;

(ii) The conversion must be justified by good cause;

(iii) The conversion must identify specific projects and/or units;

(iv) The project must be in habitable, safe and sanitary condition;

(v) In cases where only a portion of the project is to be converted, the operation of the remaining units must be

"financially feasible" (so as not to require additional operating subsidy);

(vi) The ACC must be amended to identify the number of units converted and placed under some other form of ACC; and

(vii) The project must have an approved Actual Total Development Cost Certificate (ADCC).

(2) *Special Requirements for Conversion to Mutual Help Program.*— (i) Units must be single family detached units;

(ii) Units must have individually metered utility and water facilities;

(iii) The project may not be financed with bonds;

(iv) The units must be placed under a Mutual Help ACC; and

(v) Eligible homebuyers must be able to execute the Mutual Help Agreement and provide the Mutual Help contribution.

(c) *Transfer of Occupants From Turnkey III Units to Converted Units.*— (1) *General Requirements Applicable to All Transfers.* (i) Turnkey III Homebuyers must be in compliance with their Turnkey III Agreement;

(ii) Homebuyers should be advised of the effects of conversion of the units, termination of their Turnkey III Agreements, and their transfer to another form of occupancy (including but not limited to their rights to eventual homeownership, monthly payment, etc.); and

(iii) Turnkey III Agreements must be terminated in accordance with the terms of that agreement before execution of a new occupancy agreement.

(2) *Special Requirements for Transfer to Mutual Help Program.*—(i) Potential Mutual Help homebuyers must be able to satisfy all the requirements of the Mutual Help Program and be capable of assuming the responsibilities of homeownership before transfer; and

(ii) Potential homebuyers must provide the Mutual Help contribution upon execution of the Mutual Help Agreement.

(3) *Special Requirements for Transfer to Rental Program.*—(i) In the event that the homebuyer no longer has homeownership potential due to insufficient income to pay the required monthly payment without operating subsidy or is otherwise in noncompliance with its Homeownership Agreement, the IHA shall investigate the circumstances and provide such assistance as may be feasible in order to help the family overcome the deficiency as promptly as possible. A determination of whether the family must transfer to a rental program shall be made no later than 60 days from the date of the initial investigation; and

(ii) If the determination of the IHA is that the homebuyer should be transferred to a suitable unit in an IHA rental project, the IHA shall give the homebuyer written notice of the IHA determination of the loss of homeownership potential and of the IHA's grievance procedures. If the homebuyer's current unit is converted to the rental program, the family may remain in the unit. If a rental unit of appropriate size is available, the family will be notified of a transfer to that unit. If no other unit is then available and the homebuyer's current unit is not to be converted to rental, the family will be notified that it may remain in place until an appropriate rental unit becomes available (in which case the unit remains under the Turnkey III project). Otherwise, the notice shall state that the transfer shall occur as soon as a suitable rental unit is available for occupancy, but no earlier than 30 days from the date of the notice. The notice shall also state that if the homebuyer should refuse to move under such circumstances, the family may be required to vacate the homebuyer unit, without further notice. The notice shall include a statement that the homebuyer may respond to the IHA in writing or in person, within a specified reasonable time, regarding the reason for the determination and offer of transfer, and that in such response he or she may be represented or accompanied by a person of his or her choice.

(d) *Requirements for submission to HUD.* IHA requests for conversion and transfer must:

(1) Be in writing to the Assistant Secretary and must contain the recommendation of the HUD Regional Administrator;

(2) Identify the project type, number of total project units, and number of units sought to be converted;

(3) Identify the number of Turnkey III occupants that desire conversion of the unit they occupy and transfer to another form of occupancy; and

(4) Include sufficient evidence to support all the general and/or special requirements applicable to the particular conversion or transfer as set forth in this section and in other HUD requirements.

§ 905.505 Selection of Turnkey III homebuyers.

(a) *Admission policies.* In adopting admission regulations, in accordance with § 905.301, an IHA may establish admission policies for Turnkey III projects different from those for rental or Mutual Help projects of the IHA.

(b) *Potential for homeownership.* A family shall not be selected for Turnkey III housing unless, in addition to meeting the income limits and other requirements for admission (see § 905.301):

(1) The family has an income sufficient to cover the EHPA, NRMR, and the estimated cost of utilities with its required monthly payment (see § 905.315);

(2) The family is able and willing to meet all obligations under the Homebuyer Ownership Opportunity Agreement; and

(3) The family has at least one member who is gainfully employed, or who has an established source of continuing income.

(c) *Turnkey III waiting list.*

(1) Families who wish to be considered for selection for Turnkey III housing shall apply specifically for such housing. A family on any other IHA waiting list, or a tenant in a rental project of the IHA, must also submit an application in order to be considered for a Turnkey III Project. The filing of an application for Turnkey III housing by a family that is an applicant for or occupant of Mutual Help or rental housing shall in no way affect its status with regard to the other programs; and

(2) The IHA shall maintain a waiting list, separate from any other IHA waiting list, of families that have applied for Turnkey III housing and that have been determined to meet the admission requirements. The IHA shall maintain a Turnkey III waiting list based on date of application, suitable type or size of unit, and factors affecting preference or priority established by the IHA's regulations.

(d) *Selection and notification of homebuyers.* (1)(i) Homebuyers shall be selected from those families determined to have potential for homeownership. Such selection shall be made in sequence from the waiting list established in accordance with this section, provided that paragraph (d)(1)(ii) of this section is observed.

(ii) An average monthly payment for the project (including consideration of the availability of operating subsidy) must be achieved which is at least 10 percent more than the breakeven amount for the project. This standard must be met in the filling of vacancies at all times during the life of the project. If an applicant has potential for homeownership but has a required monthly payment that would be less than the breakeven amount for the suitable size and type of unit, such applicant may be selected as a homebuyer, provided that the combined incomes of all selected homebuyers shall result in the required average monthly payment of at least 10 percent more than the breakeven amount for the

project. Such an average monthly payment for the project may be achieved by selecting other lower income families who can afford to make required monthly payments substantially above the breakeven amounts for their suitable sizes and types of units.

(2) The applicant for admission must agree to participate and cooperate fully in the IHA's counseling and training for homeownership. Failure to participate as agreed may result in the family not being selected or retained as a homebuyer.

(3)(i) Once a sufficient number of applicants have been selected to assure that the provisions of paragraph (d)(1)(ii) of this section are met, each selected applicant shall be notified of the approximate date of occupancy insofar as such date can reasonably be determined.

(ii) Applicants who are not selected for a specific Turnkey III project shall be so notified in accordance with HUD-approved procedure. The notice shall state the reason for the applicant's rejection and that the applicant will be given an informal hearing on such determination, regardless of the reason for the rejection, if he or she makes a request for such a hearing within a reasonable time (to be specified in the notice) from the date of the notice.

§ 905.507 Homebuyer Ownership Opportunity Agreements (HOOA).

(a) *General.* The HOOA must be executed between the IHA and the Homebuyer as a condition for occupancy of a Turnkey III unit. The HOOA is a lease agreement which also provides the Homebuyer with an option to purchase the home, subject to the Homebuyer's compliance with certain conditions. The Homebuyer acquires no equity in the home before purchase.

(b) *Pre-Existing Agreements.* (1) Turnkey III Projects in operation on the effective date of this subpart shall be governed by this subpart, except to the extent that the terms of any pre-existing Turnkey III Agreements shall govern the relationship of an IHA and occupant until the termination or cancellation of such agreement(s). If the Agreement establishes a maximum or a minimum monthly payment, the terms of the Agreement shall govern. However, in no event will the monthly payment charged exceed the Total Tenant Payment determined in accordance with Subpart C.

(2) Pre-existing Turnkey III Agreements that determined the required monthly payment in accordance with a "Schedule" developed by the IHA and approved by HUD should continue to determine the monthly payment in accordance with the schedule. This schedule is determined as follows:

(i) The operating budget for the project is determined, comprised of Operating Expenses (see § 905.515), the total amount needed for EHPA (see § 905.517), and the total needed for NRMR (see § 905.519). The total of these expenses constitutes the breakeven amount.

(ii) The aggregate of all homebuyers' incomes is determined. (If no definition of income is stated in the homebuyer's contract, the definition in Subpart C is used.)

(iii) The percentage of aggregated income needed to cover 110 percent of the breakeven amount is determined. This percentage is the one that appears in the schedule.

(c) *New Agreements.* The schedule to be used for Turnkey III Agreements executed after August 1, 1982 shall comply with the provisions of §§ 905.315 and 905.325 of this part.

§ 905.509 Responsibilities of homebuyer.

(a) *Repair, maintenance and use of home.* The homebuyer shall be responsible for the routine maintenance of the home to the satisfaction of the HBA and the IHA. This routine maintenance includes the work (labor and materials) of keeping the dwelling structure, grounds and equipment in good repair, condition and appearance, so that they may be utilized continually at their designed capacities and at the satisfactory level of efficiency for their intended purposes, and in conformity with the requirements of local housing codes and applicable regulations and guidelines of HUD. It includes repairs (labor and materials) to the dwelling structure, plumbing fixtures, dwelling equipment (such as range and refrigerator), shades and screens, water heater, heating equipment and other component parts of the dwelling. It also includes all interior painting and the maintenance of grounds (lot) on which the dwelling is located. It does not include maintenance and replacements provided for by the NRMR, described in § 905.519.

(b) *Repair of damage.* In addition to the obligation for routine maintenance, the homebuyer shall be responsible for repair of any damage caused by members of the family or visitors.

(c) *Care of home.* A homebuyer shall keep the home in a sanitary condition; cooperate with the IHA and the HBA in keeping and maintaining the common areas and property, including fixtures and equipment, in good condition and appearance; and follow all rules of the IHA and of the HBA concerning the use and care of the dwellings and the common areas and property.

(d) *Inspections.* A homebuyer shall agree to permit officials, employees, or agents of the IHA and of the HBA to inspect the home at reasonable hours and intervals in accordance with rules established by the IHA and the HBA.

(e) *Use of home.* A homebuyer shall not (1) sublet the home without the prior written approval of the IHA and HUD, (2) use or occupy the home for any unlawful purpose not for any purpose deemed hazardous by insurance companies on account of fire or other risks, or (3) provide accommodations (unless approved by the HBA and the IHA) to boarders or lodgers. The homebuyer shall agree to use the home only as a place to live for the family (as identified in the initial application or by subsequent amendment with the approval of the IHA), for children thereafter born to or adopted by members of such family, and for aged or widowed parents of the homebuyer or spouse who may join the household.

(f) *Obligations with respect to other persons and property.* Neither the homebuyer nor any member of the family shall interfere with rights of other occupants of the development, or damage the common property or the property of others, or create physical hazards.

(g) *Structural changes.* A homebuyer shall not make any structural changes in or additions to the home unless the IHA has first determined in writing that such change would not

(1) Impair the value of the unit, the surrounding units, or the development as a whole, or

(2) Affect the use of the home for residential purposes, or

(3) Violate HUD requirements as to construction and design.

(h) *Statements of condition and repair.* When each homebuyer moves in, the IHA shall inspect the home and shall give the homebuyer a written statement, to be signed by the IHA and the homebuyer, of the condition of the home and the equipment in it. Should the homebuyer vacate the home, the IHA shall inspect it and give the homebuyer a written statement of the repairs and other work, if any, required to put the home in good condition for the next occupant. The homebuyer or representative and a representative of the HBA may join in any inspections by the IHA.

(i) *Maintenance of common property.* The homebuyer may participate in nonroutine maintenance of the home

and in maintenance of common property.

(j) *Assignment and survivorship.* Until such time as the homebuyer obtains title to the home, it shall be used only to house a family of lower income. Therefore:

(1) A homebuyer shall not assign any right or interest in the home or any interest under the Homebuyer Ownership Opportunity Agreement without the prior written approval of the IHA and HUD;

(2) In the event of death, mental incapacity or abandonment of the family by the homebuyer, the person designated as the successor in the Homebuyer Ownership Opportunity Agreement shall succeed to the rights and responsibilities under the Agreement if that person is an occupant of the home at the time of the event and is determined by the IHA to meet all of the standards of potential for homeownership. Such person shall be designated by the homebuyer at the time the Homebuyer Ownership Opportunity Agreement is executed. This designation may be changed by the homebuyer at any time. If there is no such designation, or the designee is no longer an occupant of the home or does not meet the standards of potential for homeownership, the IHA may consider as the homebuyer any family member who was an occupant at the time of the event and who meets the standards of potential for homeownership;

(3) If there is no qualified successor in accordance with paragraph (j)(2) of this section, the IHA shall terminate the Agreement and another family shall be selected except under the following circumstances: where a minor child or children of the homebuyer's family are in occupancy, then in order to project their continued occupancy and opportunity for acquisition of ownership of the home, the IHA must approve as occupants of the unit, an appropriate adult(s) who has been appointed legal guardian of the children with a duty to perform the obligations of the Homebuyer Ownership Opportunity Agreement in their interest and on their behalf.

§ 905.511 Homebuyers' Association (HBA) and Homeowners' Association (HOA).

(a) *General.* The HBA and HOA are separate and distinct organizations with different functions. The HOA may hold title to and be responsible for maintenance of common property, while the HBA has more general service and representative functions. While all residents are members of the HBA, only those who have acquired title to their homes are members of the HOA.

(b) *HBA.* (1) Organization. An HBA is an incorporated organization composed of all the families who are entitled to occupancy pursuant to a Homebuyer Ownership Opportunity Agreement or who are Homeowners. Each family shall automatically become a member of the HBA, and the HBA shall be the representative of all such families. The functions of the HBA shall be set forth in its Articles of Incorporation and By-Laws. The IHA shall assist the HBA in its organization and operation to the extent possible.

(2) *Funding.* The IHA may provide non-cash contributions to the HBA, such as office space, as well as cash contributions, which shall be provided for in the annual operating budgets of the IHA. The cash contributions shall be in an amount provided for in the IHA budget and approved by HUD and shall be subject to any HUD restrictions on funding, but shall not exceed $3.00 per year per dwelling unit.

(c) *HOA.* A homeowners' association means an association comprised of homeowners, having responsibilities with respect to common property.

§ 905.513 Breakeven amount and application of monthly payments.

(a) *General.* The breakeven amount for a project is the minimum average monthly amount required to provide funds for operating expenses (§ 905.515), the Earned Home Payments Account (EHPA) (§ 905.517), and the Nonroutine Maintenance Reserve (NRMR) (§ 905.519). A separate breakeven amount is established for each size and type of dwelling unit, as well as for the project as a whole. The breakeven amount for EHAP and NRMR will vary by size and type of dwelling unit. Similar variations may occur for operating expenses. The breakeven amount does not include the monthly allowance for utilities for which the homebuyer pays direct.

(b) *Application of monthly payments.* The IHA shall apply the homebuyer's monthly payment as follows:

(1) To the credit of the homebuyer's EHPA;

(2) To the credit of the homebuyer's NRMR; and

(3) For payment of monthly operating expense, including contributions to the operating reserve.

(c) *Excess over breakeven.* When the homebuyer's required monthly payment exceeds the applicable breakeven amount, the excess shall constitute additional project income and shall be deposited and used in the same manner as other project income.

(d) *Deficit in monthly payment.* When the homebuyer's required monthly payment is less than the applicable breakeven amount, the deficit shall be applied as a reduction of that portion of the monthly payment designated for operating expense (*i.e.*, as a reduction of project income). In all such cases, the EHPA and the NRMR shall be credited with the amount included in the breakeven amount for these accounts, but only to the extent that the homebuyer's required monthly payment is sufficient for this purpose. Insufficient homebuyer income to cover the EHPA and the NRMR may have an adverse effect on the IHA's assessment of the homebuyer's homeownership potential and continuing eligibility for the Turnkey III program. (See §§ 905.505(b) and 905.503(c).)

§ 905.515 Monthly operating expense.

(a) *Definition and categories of monthly operating expense.* The term "monthly operating expense" means the monthly amount needed for the following purposes:

(1) *Administration.* Administrative salaries, travel, legal expenses, office supplies, etc.;

(2) *Homebuyer services.* IHA expenses in the achievement of social goals, including costs such as salaries, publications, payments to the HBA to assist its operation, contract and other costs;

(3) *Utilities.* Those utilities (such as water), if any, to be furnished by the IHA as part of operating expense;

(4) *Routine maintenance—common property.* For community building, grounds and other common areas, if any. The amount required for routine maintenance of common property depends upon the type of common property included in the development and the extent of the IHA's responsibility for maintenance;

(5) *Protective services.* The cost of supplemental protective services paid by the IHA for the protection of persons and property;

(6) *General expense.* Premiums for fire and other insurance, payments in lieu of taxes to the local taxing body, collection losses, payroll taxes, etc.;

(7) *Nonroutine maintenance—common property (Contribution to operating reserve).* Extraordinary maintenance of equipment applicable to the community building and grounds, and unanticipated items for non-dwelling structures.

(b) *Monthly operating expense rate.* (1) The monthly operating expense rate for each fiscal year shall be established on the basis of the IHA's HUD-approved operating budget for that fiscal year. The operating budget may be revised during

the course of the fiscal year in accordance with HUD requirements.

(2) If it is subsequently determined that the actual operating expense for a fiscal year was more or less than the amount provided by the monthly operating expense established for that fiscal year, the rate of monthly operating expenses to be established for the next fiscal year may be adjusted to account for the differences.

(c) *Provision for common property maintenance.* During the period the IHA is responsible for the maintenance of common property, the annual operating budget and the monthly operating expense rate shall include the amount required for routine maintenance of all common property in the development, even though a number of the homes may have been acquired by homeowners. During such period, this amount shall be computed on a pro-rata basis of the total number of homes in the development. After the homeowners association assumes responsibility for maintenance of common property, the monthly operating expenses shall include an amount equal to the monthly assessment by the homeowners' association for the remaining homes owned by the IHA (see paragraph (a)(7) of this section for nonroutine maintenance of common property).

(d) *Posting of monthly operating expense statement.* A statement showing the budgeted monthly amount allocated in the current operating expense category shall be provided to the HBA and copies shall be provided to homebuyers upon request.

§ 905.517 Earned Home Payments Account (EHPA).

(a) *Credits to the account.* The IHA shall establish and maintain a separate EHPA for each homebuyer. Since the homebuyer is responsible for maintaining the home, a portion of his required monthly payment equal to the IHA's estimate, approved by HUD, of the monthly cost for such routine maintenance, taking into consideration the relative type and size of the homeowner's home, shall be set aside in the EHPA. In addition, this account shall be credited with:

(1) Any voluntary payments made pursuant to paragraph (f) of this section, and

(2) Any amount earned through the performance of maintenance as provided in paragraph (d) of this section and § 905.519(c).

(b) *Charges to the account.* (1) If for any reason the homebuyer is unable or fails to perform any item of required maintenance as described in § 905.509(a), the IHA shall arrange to have the work done in accordance with the procedures established by the IHA and the HBA, and the cost thereof shall be charged to the homebuyer's EHPA. Inspections of the home shall be made jointly by the IHA and HBA.

(2) To the extent NRMR expense is attributable to the negligence of the homebuyer as determined by the HBA and approved by the IHA (see § 905.519), the cost thereof shall be charged to the EHPA.

(c) *Exercise of option; required amount in EHPA.* (1) The homebuyer may exercise his or her option to buy the home by paying the applicable purchase price, only after satisfying the following conditions precedent:

(i) Within the first two years of the homebuyer's occupancy, the homebuyer has achieved a balance in his or her EHPA equal to 20 times the amount of the monthly EHPA credit as initially determined in accordance with paragraph (a) of this section;

(ii) The homebuyer has met, and is continuing to meet, the requirements of the Homebuyers Ownership Opportunity Agreement;

(iii) The homebuyer has rendered, and is continuing to render, satisfactory performance of homebuyer responsibilities to the HBA.

(2) When the homebuyer has met these conditions precedent, the IHA shall give the homebuyer a certificate to that effect. After achieving the required minimum EHPA balance within the first two years of occupancy, the homebuyer shall continue to provide the required maintenance, thereby continuing to add to the EHPA. If the homebuyer fails to meet either the obligation to achieve the minimum EHPA balance, as specified, or the obligation thereafter to continue adding to EHPA, the IHA and the HBA shall investigate and take appropriate corrective action, including termination of the Agreement by the IHA in accordance with § 905.529.

(d) *Additional equity through maintenance of common property.* Homebuyers may earn addition EHPA credits by providing in whole or in part any of the maintenance necessary to the common property of the development. When such maintenance is to be provided by the homebuyer, this may be done and credit earned therefor only pursuant to a prior written agreement between the homebuyer and the IHA (or the homeowners' association, depending on who has responsibility for maintenance of the property involved), covering the nature and scope of the work and the amount of credit the homebuyer is to receive. In such cases, the agreed amount shall be charged to the appropriate maintenance account and credited to the homebuyer's EHPA upon completion of the work.

(e) *Investment of excess.* (1) When the aggregate amount of all EHPA balances exceeds the estimated reserve requirements for 90 days, the IHA shall notify the HBA and shall invest the excess in federally insured savings accounts, federally insured credit unions, and/or securities approved by HUD and in accordance with any recommendations made by the HBA. If the HBA wishes to participate in the investment program, it should submit periodically to the IHA a list of HUD-approved securities, bonds, or obligations which the association recommends for investment by the IHA of the funds in the EPHAs. Interest earned on the investment of such funds shall be prorated and credited to each homebuyer's EPHA in proportion to the amount in each such reserve account.

(2) Periodically, but not less often than semiannually, the IHA shall prepare a statement showing (i) the aggregate amount of all EHPA balances; (ii) the aggregate amount of investments (savings accounts and/or securities) held for the account of all the homebuyers' EPHAs, and (iii) the aggregate uninvested balance of all the homebuyers' EHPAs. This statement shall be made available to any authorized representative of the HBA.

(f) *Voluntary payments.* To enable the homebuyer to acquire title to the home within a shorter period, the homebuyer may, either periodically or in a lump sum, voluntarily make payments over and above the required monthly payments. Such voluntary payments shall be deposited to his credit in the homebuyer's EHPA.

(g) *Delinquent monthly payments.* Under exceptional circumstances as determined by the HBA and the IHA, a homebuyer's EHPA may be used to pay the delinquent required monthly payments, provided the amount used for this purpose does not seriously deplete the account and provided that the homebuyer agrees to cooperate in such counseling as may be made available by the IHA or the HBA.

(h) *Annual statement to homebuyer.* The IHA shall provide an annual statement to each homebuyer specifying at least (1) the amount in the EHPA, and (2) the amount in the NRMR. During the year, any maintenance or repair done on the dwelling by the IHA which is chargeable to the EPHA or to the NRMR shall be accounted for through a work order. A homebuyer shall receive a copy of all such work orders for his or her home.

(i) *Withdrawal and assignment.* The homebuyer shall have no right to assign, withdraw, or in any way dispose of the funds in its EHPA except as provided in this section or in § 905.525.

(j) *Application of EPHA upon vacating of dwelling.* (1) In the event a Homebuyers Ownership Opportunity Agreement with the IHA is terminated (§ 905.529) or if the homebuyer vacates the home (see § 905.509(j)), the IHA shall charge against the homebuyer's EHPA the amounts required to pay:

(i) The amount due the IHA, including the monthly payments the homebuyer is obligated to pay up to the date he vacates;

(ii) The monthly payment for the period the home is vacant, not to exceed 30 days from the date of notice of intention to vacate, or, if the homebuyer fails to give notice of intention to vacate, 30 days from the date the home is put in good condition for the next occupant in conformity with § 905.509; and

(iii) The cost of any routine maintenance, and of any nonroutine maintenance attributable to the negligence of the homebuyer, required to put the home in good condition for the next occupant in conformity with § 905.509.

(2) If the EHPA balance is not sufficient to cover all of these charges, the IHA shall require the homebuyer to pay the additional amount due. If the amount in the account exceeds these charges, the excess shall be paid to the homebuyer.

(3) Settlement with the homebuyer shall be made promptly after the actual cost of repairs to the dwelling has been determined (see paragraph (j)(1)(iii) of this section), provided that the IHA shall make every effort to make such settlement within 30 days from the date the homebuyer vacates. The homebuyer may obtain a settlement within 7 days of the date he or she vacates even though the actual cost of such repair has not yet been determined, if the homebuyer has given the IHA notice of intention to vacate at least 30 days before the date the family vacates and if the amount to be charged against the EHPA for such repairs is based on the IHA's estimate of the cost thereof (determined after consultation with the appropriate representative of the HBA).

§ 905.519 Nonroutine Maintenance Reserve (NRMR).

(a) *Purpose of reserve.* The IHA shall establish and maintain a separate NRMR for each home, using a portion of the homebuyer's monthly payment. The purpose of the NRMR is to provide funds for the nonroutine maintenance of the home, which consists of the infrequent and costly items of maintenance and replacement shown on the Nonroutine Maintenance Schedule for the home (see paragraph (b) of this section). Such maintenance may include the replacement of dwelling equipment (such as range and refrigerator), replacement of roof, exterior painting, major repairs to heating and plumbing systems, etc. The NRMR shall not be used for nonroutine maintenance of common property, or for nonroutine maintenance relating to the home to the extent such maintenance is attributable to the Homebuyer's negligence or to defective materials or workmanship.

(b) *Amount of reserve.* The amount of the monthly payments to be set aside for NRMR shall be determined by the IHA, with the approval of HUD, on the basis of the Nonroutine Maintenance Schedule showing the amount likely to be needed for nonroutine maintenance of the home during the term of the Homebuyer Ownership Opportunity Agreement, taking into consideration the type of construction and dwelling equipment. This schedule shall (1) list each item of nonroutine maintenance (e.g., range, refrigerator, plumbing, heating system, roofing, tile flooring, exterior painting, etc.), (2) show for each listed item the estimated frequency of maintenance or useful life before replacement, the estimated cost of maintenance or replacement (including installation) for each occasion, and the annual reserve requirement, and (3) show the total reserve requirements for all the listed items, on an annual and a monthly basis. This schedule shall be prepared by the IHA and approved by HUD. The schedule shall be reexamined annually in the light of changing economic conditions and experience.

(c) *Charges to NRMR.* (1) The IHA shall provide the nonroutine maintenance necessary for the home and the cost thereof shall be funded as provided in paragraph (c)(2) of this section. Such maintenance may be provided by the homebuyer but only pursuant to a prior written agreement with the IHA covering the nature and scope of the work and the amount of credit the homebuyer is to receive. The amount of any credit shall, upon completion of the work, be credited to the homebuyer's EHPA and charged as provided in paragraph (c)(2) of this section.

(2) The cost of nonroutine maintenance shall be charged to the NRMR for the home except that (i) to the extent such maintenance is attributable to the fault or negligence of the homebuyer, the cost shall be charged to the homebuyer's EHPA after consultation with the HBA if the homebuyer disagrees, and (ii) to the extent such maintenance is attributable to defective materials or workmanship not covered by warranty, or even though covered by warranty if not paid for thereunder through no fault or negligence of the homebuyer, the cost shall be charged to the appropriate operating expense account of the Project.

(3) In the event the amount charged against the NRMR exceeds the balance therein, the difference (deficit) shall be made up from continuing monthly credits to the NRMR based upon the homebuyer's monthly payments. If there is still a deficit when the homebuyer acquires title, the homebuyer shall pay such deficit at settlement (see paragraph (d)(2) of this section).

(d) *Transfer of NRMR.* (1) In the event the Homebuyer Ownership Opportunity Agreement is terminated, the homebuyer shall not receive any balance or be required to pay any deficit in the NRMR. When a subsequent homebuyer moves in, the NRMR shall continue to be applicable to the home in the same amount as if the preceding homebuyer had continued in occupancy.

(2) In the event the homebuyer purchases the home, and there remains a balance in the NRMR, the IHA shall pay such balance to the homeowner at settlement. In the event the homebuyer purchases and there is a deficit in the NRMR, the homebuyer shall pay such deficit to the IHA at settlement.

(e) *Investment of excess.* (1) When the aggregate amount of the NRMR balances for all the homes exceeds the estimated reserve requirements for 90 days the IHA shall invest the excess in federally insured savings accounts, federally insured credit unions, and/or securities approved by HUD. Income earned on the investment of such funds shall be prorated and credited to each homebuyer's NRMR in proportion to the amount in each reserve account.

(2) Periodically, but not less often than semiannually, the IHA shall prepare a statement showing (i) the aggregate amount of all NRMR balances, (ii) the aggregate amount of investments (savings accounts and/or securities) held for the account of the NRMRs, and (iii) the aggregate uninvested balance of the NRMRs. A copy of this statement shall be made available to any authorized representative of the HBA.

§ 905.521 Operating reserve.

(a) *Purpose of the reserve.* To the extent that total operating receipts (including subsidies for operations) exceed total operating expenditures of the project, the IHA shall establish an

operating reserve up to the maximum approved by HUD in connection with its approval of the annual operating budgets for the project. The purpose of this reserve is to provide funds for:

(1) The infrequent but costly items of nonroutine maintenance and replacements of common property, taking into consideration the types of items which constitute common property, such as nondwelling structures and equipment, and in certain cases, common elements of dwelling structures;

(2) Nonroutine maintenance for the homes to the extent such maintenance is attributable to defective materials or workmanship not covered by warranty;

(3) Working capital, including funds to cover a deficit in a homebuyer's NRMR until such deficit is offset by future monthly payments by the homeowner or a settlement in the event the homebuyer should purchase; and

(4) A deficit in the operation of a project for a fiscal year, including any deficit resulting from monthly payments totaling less than the breakeven amount for the project.

(b) *Nonroutine maintenance—common property (contribution to operating reserve).* The amount under this heading to be included in operating expense (and in the breakeven amount) established for the fiscal year shall be determined by the IHA, with the approval of HUD, on the basis of estimates of the monthly amount needed to accumulate an adequate reserve for the items described in paragraph (a)(1) of this section. This amount shall be subject to revision in the light of experience. This contribution to the operating reserve shall be made only during the period the IHA is responsible for the maintenance of any common property; and during such period, the amount shall be determined on the basis of the requirements of all common property in the development. When the operating reserve reaches the maximum authorized in paragraph (c) of this section, the breakeven (monthly operating expense) computations for the next and succeeding fiscal years need not include a provision for this contribution to the operating reserve unless the balance of the reserve is reduced below the maximum during any such succeeding fiscal year.

(c) *Maximum operating reserve.* The maximum operating reserve that may be retained by the IHA at the end of any fiscal year shall be the sum of (1) one-half of total routine expense included in the operating budget approved for the next fiscal year and (2) one-third of total breakeven amounts included in the operating budget approved for the next fiscal year; provided that such maximum may be increased if necessary as determined or approved by HUD. Total routine expense means the sum of the amounts budgeted for administration, homebuyers' services, IHA-supplied utilities, routine maintenance of common property, protective services, and general expense or other category of day-to-day routine expense.

(d) *Transfer to homeowners' association.* The IHA shall be responsible for and shall retain custody of the operating reserve until the homeowners acquire voting control of the homeowners' association. When the homeowners acquire voting control, the homeowners' association shall then assume full responsibility for management and maintenance of common property under a plan approved by HUD, and there shall be transferred to the homeowners' association a portion of the operating reserve then held by the IHA. The amount of the reserve to be transferred shall be based upon the proportion that one-half of budgeted routine expense (used as a basis for determining the current maximum operating reserve—see paragraph (c) of this section) bears to the approved maximum operating reserve. Specifically, the portion of operating reserve to be transferred shall be computed as follows: Obtain a percentage by dividing one-half of budgeted routine expense by the approved maximum operating reserve; and multiply the actual operating reserve balance by this percentage.

(e) *Disposition of reserve.* If, at the end of a fiscal year, there is an excess over the maximum operating reserve, this excess shall be applied to the operating deficit of the project, if any, and any remainder shall be paid to HUD. Following the end of the fiscal year in which the last home has been conveyed by the IHA, the balance of the operating reserve held by the IHA shall be paid to HUD, provided that the aggregate amount of payments by the IHA under this paragraph shall not exceed the aggregate amount of annual contributions paid by HUD with respect to the project.

§ 905.523 Operating subsidy.

Operating subsidy may be paid by HUD, subject to the availability of funds for this purpose and at HUD's sole discretion, to cover an operating deficit as approved by HUD in an operating budget submitted by an IHA for a Turnkey III project. However, operating subsidy or project funds may not be used to establish or maintain the homebuyer reserve accounts. Although operating subsidy or project funds may be used to pay the cost of utilities for an individual unit by way of a utility reimbursement when a homebuyer has insufficient tenant income to cover even the utilities, payment of a utility reimbursement may have an adverse effect on the IHA's assessment of the homebuyer's homeownership potential and continuing eligibility for the Turnkey III program. (See § 905.505(b) and § 905.503(c)(3).)

(Approved by the Office of Management and Budget under OMB control number 2577–0026.)

§ 905.525 Achievement of ownership.

(a) *Optional.* (1) The homebuyer may exercise the option to purchase the home and achieve ownership when the amount in his or her EHPA, plus such portion of the NRMR as he or she wishes to use for the purchase, is equal to the purchase price as shown at that time on the homebuyer's purchase price schedule plus all incidental costs. For this purpose, incidental costs mean the costs incidental to acquiring ownership, including, but not limited to, the costs for a credit report, field survey, title examination, title insurance, and inspections, the fees for attorneys other than the IHA's attorney, mortgage application, closing and recording, and the transfer taxes and loan discount payment, if any. If for any reason title to the home is not conveyed to the homebuyer during the month in which the combined total in the EHPA and designated portion of the NRMR equals the purchase price, the purchase price shall be fixed as the amount specified for that month and the homebuyer shall be refunded.

(i) The net additions, if any, credited to his or her EHPA after that month, and

(ii) Such part of the monthly payments made by the homebuyer after the purchase price has been fixed which exceeds the sum of the breakeven amount attributable to the unit and the interest portion of the debt service shown in the purchase price schedule.

(2) Where the sum of the purchase price and incidental costs is greater than the amounts in the homebuyer's EHPA and NRMR as described in paragraph (c)(1) of this section, the homebuyer may achieve ownership by obtaining financing for or otherwise paying the excess amount. The purchase price shall be the amount shown on the homebuyer's purchase price schedule for the month in which the settlement date for the purchase occurred.

(3) The maximum period for achieving ownership shall be 30 years, but depending upon increases in the homebuyer's income and the amount of

credit which the homebuyer can accumulate through maintenance and voluntary payments, the period may be shortened accordingly.

(b) *Mandatory.* (1) When the IHA determines that the homebuyer's adjusted monthly income has reached, and is likely to continue at, a level at which the current amount of the homebuyer's required monthly payment (as determined in accordance with Subpart C of this part) equals or exceeds the monthly housing cost (as described in paragraph (b)(2) of this section), the homebuyer ceases to be eligible for continued occupancy as a homebuyer under its homebuyer ownership opportunity agreement. At that point, if the IHA determines, with HUD approval, that suitable financing is available, the IHA shall notify the homebuyer that he or she must either exercise the option to purchase the home, or move from the development. If the IHA determines that suitable financing is not available or that—despite its availability—because of special circumstances, the family is unable to find decent, safe, and sanitary housing within the family's financial reach, although making every reasonable effort to do so, the family may be permitted to remain for the duration of the situation if it pays as rent an amount equal to Total Tenant Payment, as determined in accordance with Subpart C of this part.

(2) The term "monthly housing cost," as used in this paragraph, means the sum of:

(i) The monthly debt service amount shown on the purchase price schedule;

(ii) One-twelfth of the annual real property taxes which the homebuyer will be required to pay as a homeowner;

(iii) One-twelfth of the annual premium attributable to fire and extended coverage insurance carried by the IHA with respect to the home;

(iv) The current monthly per unit amount budgeted for routine maintenance of common property; and

(v) The current IHA and HUD approved monthly allowance for utilities paid for directly by the homebuyer plus the monthly cost of utilities supplied by the IHA.

(c) *Subsequent homebuyer*—(1) *Determination of initial purchase price.* The initial purchase price for a subsequent homebuyer shall be an amount equal to (i) the purchase price shown in the initial homebuyer's purchase price schedule as of the date of the agreement with the subsequent homebuyer plus (ii) the amount, if any, by which the appraised fair market value of the home, determined or approved by HUD as of the same date, exceeds the purchase price specified in paragraph (c)(2) of this section.

(2) *Purchase price schedule.* The subsequent homebuyer's purchase price schedule shall be the same as the unexpired portion of the initial homebuyer's purchase price schedule except that where the purchase price includes an additional amount as specified in paragraph (b)(2) of this section, the initial homebuyer's purchase price schedule shall be supplemented by an additional purchase price schedule for such additional amount based upon the same monthly debt service and the same interest rate as applied to the initial homebuyer's purchase price schedule.

(3) *Residual receipts.* After payment in full of the IHA's debt, if there are any subsequent homebuyers who have not acquired ownership of their homes, the IHA shall continue to pay to HUD all residual receipts from the operation of the project, including payments received on account of any additional purchase price schedules applicable to the homes, provided the aggregate amount of such payments of residual receipts does not exceed the aggregate amount of annual contributions paid by HUD with respect to the project.

(4) *Transfer of title to homebuyer.* When the homebuyer is to obtain ownership, a closing date shall be mutually agreed upon by the parties. On the closing date the homebuyer shall pay the required amount of money to the IHA, or to the homeowners' association, as appropriate, including taxes and a provision for a reserve.

§ 905.527 Payment upon resale at profit.

(a) *Promissory note.* (1) When a homebuyer achieves ownership, the homebuyer shall sign a note obligating him or her to make payment to the IHA, subject to the provisions of paragraph (a)(2) of this section, in the event he or she resells the home at a profit within 5 years of actual residence in the home after becoming a homeowner. If, however, the homeowner should purchase and occupy another home within one year (18 months in the case of a newly constructed home) of the resale of the Turnkey III home, the IHA shall refund to the homeowner the amount previously paid under the note, less the amount, if any, by which the resale price of the Turnkey III home exceeds the acquisition price of the new home, provided that application for such refund shall be made no later than 30 days after the date of acquisition of the new home.

(2) The note to be signed by the homeowner pursuant to paragraph (a)(1) of this section shall be a noninterest-bearing promissory note to the IHA. The note shall be executed at the time the homebuyer becomes a homeowner and shall be secured by a second mortgage. The initial amount of the note shall be computed by taking the appraised value of the home at the time the homebuyer becomes a homeowner and subtracting (i) the homebuyer's purchase price plus incidental costs (as described in § 905.525(a)(1)) and (ii) the increase in value of the home, determined by appraisal, caused by improvements paid for by the homebuyer with funds from sources other than the EHPA or NRMR. The note shall provide that this initial amount shall be automatically reduced by 20 percent thereof at the end of each year of residency as a homeowner, with the note terminating at the end of the five-year period of residency, as determined by the IHA. To protect the homeowner, the note shall provide that the amount payable under it shall in no event be more than the net profit on the resale, that is, the amount by which the resale price exceeds the sum of

(A) The homebuyer's purchase price plus incidental costs,

(B) The costs of the resale, including commissions and mortgage prepayment penalties, if any, and

(C) The increase in value of the home, determined by appraisal, due to improvements paid for as a homebuyer (with funds from sources other than the EHPA or NRMR) or as a homeowner.

(3) Amounts collected by the IHA under such notes shall be retained by the IHA for use in making refunds pursuant to paragraph (a)(1) of this section. After expiration of the period for the filing of claims for such refunds, any remaining amounts shall be applied to

(i) To reduce the IHA's capital indebtedness on the project and

(ii) After such indebtedness has been paid, for such purposes as may be authorized or approved by HUD under such Annual Contributions Contract as the IHA may then have with HUD.

(b) *Residency requirements.* The five-year note period does not end if the homeowner rents or otherwise does not use the home as his or her principal place of residence for any period within the first five years after achieving ownership. Only the actual amount of time the homeowner is in residence is counted, and the note shall be in effect until a total of five years time of residence has elapsed, at which time the homeowner may request the IHA to release him or her from the note, and the IHA shall do so.

§ 905.529 Termination of homebuyer ownership opportunity agreement.

(a) *Termination by IHA.* (1) In the event the homebuyer should breach the Homebuyer Ownership Opportunity Agreement by failure to make the required monthly payment within ten days after its due date, by misrepresentation or withholding of information in applying for admission or in connection with any subsequent reexamination of income and family composition, by failure to comply with any of the other homebuyer obligations under the agreement, by loss of homeownership potential (beyond a temporary, unforeseen change in circumstances) (see § 905.503(c)(3)), or by reaching an income that requires outright purchase (see § 905.503(b)), the IHA may terminate the agreement 30 days after giving the homebuyer notice of its intention to do so in accordance with paragraph (a)(2) of this section.

(2) Notice of termination by the IHA shall be in writing. Such notice shall state:

(i) The reason for termination;

(ii) That the homebuyer may respond to the IHA, in writing or in person, within a specified reasonable period of time regarding the reason for termination;

(iii) That in such response the homebuyer may be represented of the HBA;

(iv) That the IHA will consult the HBA concerning this termination; and

(v) That unless the IHA rescinds or modifies the notices, the termination shall be effective at the end of the 30-day notice period.

(b) *Termination by the homebuyer.* The homebuyer may terminate the Homebuyer Ownership Opportunity Agreement by giving the IHA 30 days notice in writing of this intention to terminate and vacate the home. In the event that the homebuyer vacates the home without notice to the IHA, the agreement shall be terminated automatically and the IHA may dispose of, in any manner deemed suitable by it, any items of personal property left by the homebuyer in the home.

(c) *Transfer to the rental program.* In the event of termination of the homeownership agreement by the IHA or by the homebuyer with adequate notice, the homebuyer will be transferred to a suitable unit in the rental program, in accordance with § 905.503(c)(3)(ii). In that event, the amount in the homeowner's EHPA shall be paid in accordance with § 905.517(j).

Subpart F—Lead-Based Paint Poisoning Prevention

§ 905.551 Purpose and applicability.

The purpose of this subpart is to implement the provisions of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821–4846, by establishing procedures to eliminate as far as practicable the immediate hazards from the presence of paint which may contain lead in IHA-owned housing assisted under the United States Housing Act of 1937. This subpart applies to IHA-owned lower income housing projects, including Turnkey III, Mutual Help and conveyed Lanham Act and Public Works Administration projects, and to section 23 Leased Housing Bond-Financed projects. This subpart does not apply to projects under the section 23 Leased Housing Non-Bond-Financed Program, the section 10(c) Leased Housing Program, and the section 23 and section 8 Housing Assistance Payments Programs. This subpart is promulgated in accordance with the authorization granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements prescribed by Subpart C of 24 CFR Part 35.

§ 905.555 Notification.

(a) *General.* Tenants in IHA-owned lower income public housing projects constructed before 1978 shall be notified:

(1) That the property was constructed before 1978;

(2) That the property may contain lead-based paint;

(3) Of the hazards of lead-based paint;

(4) Of the symptoms and treatment of lead-based paint poisoning;

(5) Of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards); and

(6) Of the advisability and availability of blood and lead level screening for children under seven years of age. Tenants shall be advised to notify the IHA if a child is identified as having an elevated lead blood level (EBL) condition.

(b) *Applicants.* A notice of the dangers of lead-based paint poisoning and a notice of the advisability and availability of blood lead level screening for children under seven years of age shall be provided to every applicant family at the time of application. The applicant family shall be advised, if screening is utilized and an EBL condition identified, to notify the IHA.

§ 905.560 Maintenance obligation; defective paint surfaces.

In family projects constructed before 1978, the IHA shall inspect units for defective paint surfaces at unit turnover when the incoming household includes a member seven years of age or under, and as part of routine periodic unit inspections. If defective paint surfaces are found, covering or removal of the defective paint spots as described in § 35.24(b)(2) shall be required. Treatment shall be completed before occupancy in the case of unit turnover, and within a reasonable period of time when discovered as part of routine periodic unit inspections.

§ 905.565 Procedures involving EBLs.

(a) *Procedures Where a Current Resident Child has an EBL.* When a child residing in an IHA-owned lower income housing project has been identified as having an EBL, the IHA shall:

(1) Test all chewable surfaces and defective paint surfaces in the unit or IHA-owned and operated child care facilities used by the EBL child for lead-based paint. (The IHA may also test the non-chewable applicable surfaces. Testing of exteriors and common areas (including non-dwelling IHA facilities which are commonly used by children under seven years of age) will be done as considered necessary and appropriate by the IHA and HUD) and treat (where positive) the surfaces found to contain lead-based paint or

(2) Transfer the family with an EBL child to a post-1978 or previously tested or treated unit.

(b) *Procedures for Admission of an EBL Child.* When an applicant family has a child with an identified EBL, the IHA shall

(1) Test all chewable surfaces and defective paint surfaces in the unit assigned for lead-based paint (the IHA may also test the non-chewable applicable surfaces. Testing of exteriors and common areas (including non-dwelling IHA facilities which are commonly used by children under seven years of age) will be done as considered necessary and appropriate by the IHA and HUD) and teat (where positive) the surfaces found to contain lead-based paint or

(2) Assign the family to a post-1978 unit or a previously tested or treated unit.

(c) *Testing Requirements.* Testing of the unit housing the EBL child and the IHA-owned or operated child care facilities used by the EBL child shall be completed within five days after notification of the IHA of the

identification of the child. Testing of a unit for an applicant family which has an EBL child shall be completed before occupancy. Testing services available from State, local or tribal health or housing agencies shall be utilized to the extent available. Testing will be considered as an eligible modernization cost under Subpart G of this part only upon IHA certification that testing services are otherwise unavailable. Testing shall be performed by using an X-ray fluorescence analyzer (XRF). Laboratory chemical analysis may be used if approved by HUD in cases where it is not practical to obtain XRF readings. XRF readings of 1 mg/cm^2 or higher are considered positive for presence of lead-based paint.

(d) *Hazard Abatement Requirements.*

(1) *Abatement Actions.* Hazard abatement actions shall be carried out in accordance with the following requirements and order of priority:

(i) Unit housing or to be housing a child with EBL. If defective lead-based paint surfaces are found within the unit, the entire surface shall be treated. Any chewable surface found to contain lead-based paint shall be treated. Treatment of a unit for an applicant family which has an EBL child shall be completed before occupancy. Where full treatment of a unit housing an EBL child cannot be completed within five days after positive testing, emergency intervention actions (including removing defective lead-based paint and scrubbing surfaces after such removal with strong detergents) shall be taken within such time. Full treatment of a unit housing an EBL child shall be completed within 14 days after positive testing, unless funding sources are not immediately available. In such event, reprogramming of previously approved CIAP funds, or emergency modernization funds, shall be requested immediately.

(ii) IHA-owned or operated child care facilities used by a child with an EBL. If defective lead-based paint surfaces are found within the facility, the entire surface shall be treated. Also any chewable surface found to contain lead-based paint shall be treated.

(iii) Common areas (including nondwelling IHA facilities which are commonly used by children under seven years of age) and exterior applicable surfaces of projects in which children with EBLs reside. Where considered necessary and appropriate by the IHA and HUD, abatement shall be provided to defective lead-based paint spots on common areas and exterior applicable surfaces other than chewable surfaces, and to complete chewable surfaces containing defective or intact lead-based paint.

(2) *Abatement Methods.* Abatement shall be provided by such methods as described in § 35.24(b)(2). The IHA shall select a cost-effective and safe treatment for the surface under the circumstances.

(3) *Tenant Protection.* The IHA shall take appropriate action to protect tenants including children with EBLs, other children, and pregnant women from hazards associated with abatement procedures. When necessary, tenants must be relocated during abatement in order to mitigate possible health hazards arising from the abatement process, except when abatement is accomplished by removal of woodwork or covering of walls or woodwork. Tenant relocation may be accomplished with CIAP assistance.

(4) *Disposal of Lead-Based Paint Debris.* The IHA shall dispose of lead-based paint debris in accordance with applicable local, State or Federal requirements. (See, *e.g.*, 40 CFR Parts 260–271.)

(e) *Records.* The IHA shall maintain records on which units, common areas and exteriors and IHA child care facilities have been tested, results of the testing, and the condition of painted surfaces by location in or on the unit, common area, exterior surface or IHA child care facility. The IHA shall report information regarding such testing, in accordance with such requirements as shall be prescribed by HUD. The IHA shall also maintain records of abatement provided under this subpart, and shall report information regarding such abatement, and its compliance with the requirements of 24 CFR Part 35 and § 905.555, in accordance with such requirements as shall be prescribed by HUD. If records establish that a unit, IHA child care facility, exterior or common area was tested or treated in accordance with the standards prescribed in this subpart before or after September 23, 1986, such units, child care facilities, exteriors or common areas are not required to be retested or re-treated.

(Information collection requirements contained in paragraph (e) were approved by the Office of Management and Budget under control number 2577–0090.)

§ 905.570 Testing and abatement applicable to modernization.

(a) *Applicability of requirements.* (1) For comprehensive modernization projects for which funding was approved before September 23, 1986, which involve the breaking of a painted surface that may contain lead-based paint, no construction contracts, excluding those solely for emergency work items, shall be executed until random testing as described in this section has taken place and any necessary abatement as described in this section and in § 905.565(d) is included in the modernization budget.

(2) For comprehensive modernization projects for which funds are reserved on or after September 23, 1986, no construction contracts, excluding those solely for emergency work items, shall be executed until random testing as described in this section has taken place and any necessary abatement as described in this section and in § 905.565(d) is included in the modernization budget.

(b) *Random testing.* (1) The IHA shall cause a random sample of the comprehensive modernization project units to be tested for lead-based paint on chewable surfaces and defective paint surfaces, if the family project was—

(i) Constructed or substantially rehabilitated before 1973, or

(ii) Constructed or substantially rehabilitated during or after 1973 but before 1978 under circumstances not subjecting such construction or rehabilitation to the requirements of 24 CFR Part 35 (as then in effect).

(2) Ten units shall be tested in comprehensive modernization projects with 20 or more units, and six units shall be tested in projects with fewer than 20 units, together with a sample of common areas and exterior chewable surfaces and defective paint surfaces which are part of the comprehensive modernization project. Common areas included in the sample may include IHA-owned or operated child care centers or non-dwelling IHA facilities commonly used by children under seven years of age. If none of the tested units, common areas or exterior applicable surfaces contain lead-based paint, the comprehensive modernization project may be considered free of lead-based paint, and no further testing or abatement action will be required. If lead-based paint is found in any units in the sample, all units in the comprehensive modernization project are required to be tested. If lead-based paint is found in any common areas, all common areas in the comprehensive modernization project are required to be tested. If lead-based paint is found in any exterior applicable surface, all exterior applicable surfaces in the comprehensive modernization project are required to be tested. In the comprehensive modernization projects that are known to contain some lead-based paint, no random sampling is necessary, but each unit shall be tested.

Testing requirements as described in § 905.565(c) shall be followed.

(c) *Abatement.* Where defective lead-based paint is found on a wall or ceiling surface within a unit or an IHA-owned or operated child care facility, the entire wall or ceiling surface shall be treated. If lead-based paint is found on chewable surfaces within a unit, the entire chewable surface shall be treated. In common areas, including interior surfaces or non-dwelling IHA facilities (which are commonly used by children under seven years of age), and on applicable exterior surfaces, treatment shall be provided to defective lead-based paint spots and to complete chewable surfaces containing defective or intact lead-based paint. Abatement within a comprehensive modernization project should be prioritized in relation to the immediacy of the hazards found to children under seven years of age.

(Approved by the Office of Management and Budget under control number 2577–0090)

§ 905.575 Compliance with tribal, State and local laws.

(a) *IHA Responsibilities.* Nothing in this subpart is intended to relieve an IHA of any responsibility for compliance with tribal, State or local laws, ordinances, codes or regulations governing lead-based paint testing or hazard abatement. The IHA shall maintain records evidencing compliance with applicable tribal, State or local requirements, and shall report information concerning such compliance, in accordance with such requirements as shall be prescribed by HUD.

(b) *HUD Responsibility.* If HUD determines that a tribal, State or local law, ordinance, code or regulation provides for lead-based paint testing or hazard abatement in a manner which provides a comparable level of protection from the hazards of lead-based paint poisoning to that provided by the requirements of this subpart and that adherence to the requirements of this subpart would be duplicative or otherwise cause inefficiencies, HUD may modify or waive the requirements of this subpart in such a manner as may be appropriate to promote efficiency while ensuring such comparable level of protection.

(Approved by the Office of Management and Budget under OMB Control Number 2577–0090)

§ 905.580 Monitoring and enforcement.

IHA compliance with the requirements of this subpart will be included in the scope of HUD monitoring of IHA operations. Noncompliance with any requirement of this subpart may subject an IHA to sanctions provided under the Annual Contributions Contract or to enforcement by other means authorized by law.

Subpart G—Comprehensive Improvement Assistance Program

§ 905.601 Purpose and applicability.

(a) Section 14 of the United States Housing Act of 1937 establishes the Comprehensive Improvement Assistance Program (CIAP), authorizing the Department of Housing and Urban Development (HUD) to provide financial assistance to Indian Housing Authorities (IHAs), to improve the physical condition and upgrade the management and operation of existing public housing projects to assure that such projects continue to be available to serve lower income families. These physical and management improvements are funded by capital grants provided under section 5(c) of the Act. The purpose of this part is to prescribe requirements and procedures for the CIAP.

(b) This part applies to IHA-owned lower income public housing projects, including conveyed Lanham Act and Public Works Administration (PWA) projects, and to Section 23 Leased Housing Bond-Financed projects, for which IHAs request assistance under the CIAP in Federal Fiscal Year (FFY) 1981 and thereafter. This part also applies to the implementation of modernization programs which were approved before FFY 1981. This part does not apply to projects under the Section 23 Leased Housing Non-Bond Financed Program, and the Section 23 and Section 8 Housing Assistance Payments Programs.

(c) See § 905.125 for general requirements of Federal statutes other than the Act that apply to modernization under this subpart. With respect to requirements for testing and abatement of lead-based paint, see § 905.570.

§ 905.605 Eligible costs.

(a) *Physical Improvements.* Physical improvements eligible for modernization funding may include alterations, betterments, additions, replacements, and non-routine maintenance that are necessary to meet the modernization and engery conservation standards prescribed in § 905.670. These standards may be exceeded only when necessary or highly desirable for the long-term physical and social viability of the individual project. If demolition is proposed, the IHA shall comply with Subpart K.

(b) *Management Improvement Costs.*—(1) *Eligibility.* Management improvements that are project-specific or IHA-wide in nature are eligible modernization costs only under comprehensive modernization, subject to the following conditions:

(i) The management improvements are necessary to correct identified management problems and to sustain the physical improvements at the project to be modernized;

(ii) The management improvements require additional funds for implementation and the funds are not available from other sources;

(iii) The combined costs for management improvements and planning under paragraph (d) of this section do not exceed 10 percent of the approved physical improvement costs for an IHA in a particular FFY, unless specifically approved by HUD. Under paragraph (d) of this section, planning costs shall not exceed five percent of the funds available to the HUD office in a particular FFY;

(iv) Management improvement costs are funded only for the implementation period of the physical improvements. In rare cases, the HUD office may approve a longer period, up to a maximum of five years where it is clearly shown to be necessary to complete the initial installation and demonstrate that the management work item will bring about needed management improvements; and

(v) Where an approved modernization program includes management improvements which involve ongoing costs, HUD is not obligated to provide continued funding or additional operating subsidy after the end of the implementation period of the management improvements. The IHA is responsible for finding other funding sources, reducing its ongoing management costs, or terminating the management activities.

(2) *Eligible Management Areas.* Subject to the conditions set forth in paragraph (b)(1) of this section, management improvements may involve or upgrade the following areas:

(i) Management, financial and accounting control systems of the IHA that are related to the project to be modernized;

(ii) Adequacy and qualifications of personnel employed by the IHA in the management and operation of the project to be modernized for each category of employment; and

(iii) Adequacy and efficacy of the following for the project to be modernized:

(A) Tenant programs and services;

(B) Tenant and project security;

(C) Tenant selection and eviction;

(D) Occupancy;

(E) Rent collection; and

(F) Maintenance.

(c) *Tenant Moving Costs.* Moving costs for tenants who have to be moved, either temporarily or permanently, to accommodate the modernization, including the move back to the modernized project or units where necessary, are eligible modernization costs. The IHA shall provide temporary or permanent housing at comparable cost for affected tenants on a nondiscriminatory basis.

(d) *Planning Costs.* Planning costs necessary for developing the preliminary and/or final applications (*i.e.*, costs incurred before modernization program approval) are eligible modernization costs. These costs may be reimbursed after final application approval. Financially distressed IHAs may request approval from HUD for up-front funding of planning costs where the HUD office determines that developing the preliminary and/or final applications would otherwise present an undue financial hardship. For this purpose, a financially distressed IHA is an IHA whose tenant accounts receivable (TARs), operating reserve levels, and/or handling of cash (*i.e.*, diversion of monies) have resulted in a HUD determination that the IHA is or is soon likely to be in serious financial difficulty. Not more than five percent of the funds available to the HUD office in a particular FFY shall be used for planning costs.

(e) *Administrative Costs.* Administrative costs necessary for the additional design and implementation of the physical and management improvements (*i.e.*, costs to be incurred after modernization program approval) are eligible modernization costs, as follows:

(1) *Nontechnical and technical salaries.* The salaries of nontechnical and technical IHA personnel assigned full-time or part-time to the modernization program are eligible modernization costs. Any proration of salaries shall be justified by the IHA, authorized by the HUD office and reflected by an appropriate revision to the IHA's operating budget.

(2) *Employee Benefit Contributions.* IHA contributions to employee benefit plans on behalf of nontechnical and technical IHA personnel are eligible modernization costs in proportion to the amount of salary charged to the modernization program.

(f) *Homeownership Projects.* For homeownership projects only, eligible physical improvements are limited to work items that are not the responsibility of the homebuyer families and that are related to health and safety, correction of development deficiencies and cost-effective energy conservation. Nonroutine maintenance or replacements, additions, items that are the responsibility of the homebuyer families, and management improvements are not eligible modernization costs for homeownership projects.

(g) *Lead-Based Paint Testing.* Lead-based paint testing costs, as described in § 905.570, are eligible modernization costs.

(h) *Lead-Based Paint Hazard Abatement.* Lead-based paint hazard abatement costs, as described in § 905.565 and § 905.570, are eligible modernization costs.

§ 905.610 Procedures for obtaining approval of a modernization program.

(a) *HUD Notification.* As soon as possible after modernization funds for a particular FFY become available, HUD shall give written notification of the availability of such funds and the time frame for submission of the preliminary applications.

(b) *IHA Consultation With Local Officials and Tenants/Homebuyers.* The IHA shall develop the application in consultation with local officials and tenants/homebuyers at the project to be modernized, as set forth in § 905.620 and § 905.625. Before developing the preliminary application, the IHA shall consult with local officials as to whether the proposed comprehensive or special purpose modernization is financially feasible and will result in long-term physical and social viability of the project.

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(c) *Preliminary Application.* Based on an initial comprehensive assessment of its improvement needs, including a determination of the financial feasibility (as defined in § 905.102) of the proposed comprehensive or special purpose modernization and the long-term viability of the project(s) after modernization, the IHA shall submit to the HUD office a preliminary application, in a form prescribed by HUD, which shall contain:

(1) A five-year plan, which is the IHA's initial comprehensive assessment of the modernization funds to be requested over a five-year period to meet the total physical and management improvement needs of its projects, including any special purpose and homeownership needs, as well as any emergency needs in the current year. The plan must include gross estimates of the total needs of the project(s) for which comprehensive modernization is requested and gross estimates of the specialized needs of the project(s) for which special purpose, emergency or homeownership modernization is requested.

(2) A brief explanation of the priority order of the projects for which modernization funding is requested in the current FFY (see paragraph (h) of this section).

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(d) *HUD Screening.* The HUD office shall review the preliminary application. The HUD office shall select a preliminary application for further processing on the basis of such factors as the urgency of the need and the IHA's administrative capability, as described in § 905.145, and modernization capability. Modernization capability is adequate if the IHA obligates approved modernization funds within the HUD-approved schedule, except in circumstances beyond the IHA's control. Funds are considered obligated when the IHA awards a contract or starts force account work for the modernization project. Circumstances beyond the IHA's control may be found by the HUD office in such cases as delays resulting from litigation, environmental review or strikes.

(e) *IHA Preparation for Joint Review.* The IHA shall prepare for the joint review by:

(1) Reaching agreement with the HUD office on the specific project(s) to be covered during the join review;

(2) Completing a detailed comprehensive assessment, in a form prescribed by HUD, of the total physical and management improvement needs of the project(s) for which the IHA is requesting comprehensive modernization and of the specialized needs of the project(s) for which the IHA is requesting special purpose, emergency or homeownership modernization in the current FFY. For each project proposed for comprehensive modernization, the comprehensive assessment shall include: the current physical condition and the physical improvements necessary to meet the standards (see § 905.605(a)); the improvements needed to upgrade the management and operation so that decent, safe and sanitary living conditions will be provided; and an identification of management needs related to items set forth in § 905.605(b)(2);

(3) Reviewing the other points to be covered during the joint review as prescribed by HUD.

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(f) *Joint Review.* The IHA and the HUD office shall conduct on on-site review to discuss the proposed modernization program, as set forth in the preliminary application and the detailed comprehensive assessment, and reach tentative agreement on IHA needs. The joint review shall include an on-site inspection of the property and resolution of the relevant issues as prescribed by HUD.

(g) *Comprehensive Modernization Approach.* The proposed comprehensive modernization shall be funded in one stage, unless the HUD office determines, based upon the criteria set forth in paragraph (g)(2) of this section, that it shall be funded in two stages.

(1) *One-Stage Funding.* In general, comprehensive modernization will be funded in one stage. Under one-stage funding, the total amount of modernization funds for all required physical and management improvements at the project shall be approved at one time, out of funds for a single FFY, under one final application. The IHA and the HUD office shall agree on the length of the implementation period that is appropriate for the particular modernization program. The entire modernization program for the project shall generally be completed within a period of not more than three years. However, if is is shown to the satisfaction of the HUD office that the scope of the improvements is unusually extensive or the nature of the improvements necessitates a longer implementation period, a longer implementation period not to exceed five years may be approved. See § 905.605(b) on the implementation period of management improvements.

(2) *Two-Stage Funding.* On an exception basis, the comprehensive modernization will be funded in two stages. Under two-stage funding, the total amount of the modernization funds for all required physical and management improvements at the project shall be approved at two different times.

(i) *Mandatory.* Where the HUD office determines that the IHA lacks modernization capability, as described in paragraph (d) of this section, the HUD office shall fund comprehensive modernization in two stages. At the first stage, approval is limited to funds for architectural/engineering work and a portion of the management improvements.

(ii) *Optional.* Where the HUD office determines that the IHA lacks administrative capability, as described in § 905.145, or that the magnitude of the total funds required for comprehensive modernization is such that one-stage funding is precluded by the HUD office's allocation, the HUD office may fund comprehensive modernization in two stages. At the first stage, approval may include funds for architectural/engineering work and a portion of the physical and management improvements.

(iii) *First Stage.* The first stage shall be approved out of funds for single FFY, under one final application. The final application shall address all required improvements at the project, except that the modernization plan under paragraph (i)(2) of this section shall pertain only to work items to be completed during the first stage. When approving the first stage, the HUD office will indicate the approximate balance of the modernization funds to be approved for the project at the second stage and its intent to approve that balance, subject to the availability of future funds, satisfactory progress by the IHA in obligating first stage funds, IHA submission of additional documents and IHA compliance with HUD regulatory and statutory requirements.

(iv) *Second Stage.* Where the IHA is requesting funding for the second stage of a two-stage comprehensive modernization project, the HUD office will determine whether the IHA has met the conditions stated in paragraph (g)(2)(iii) of this section. If not, the HUD office may not approve the second stage for funding at this time. The IHA submission for the second stage is limited only to the items as deemed necessary by HUD.

(v) *Implementation Period.* The entire modernization program for the project shall be completed within a maximum five-year period. The IHA and the HUD office shall agree on the length of the implementation period of each stage. The first stage shall be completed within a maximum two-year period and the second stage within maximum three-year period.

(3) *Lead-Based Paint Testing and Abatement Funding.* In general, modernization involving lead-based paint testing and abatement may be funded in one or two stages as described in paragraphs (g)(1) and (2) of this section.

(h) *HUD Preliminary Funding Decisions.* After all of the joint reviews, the HUD office will determine whether the IHA will be invited to submit the final application for the identified project(s) by considering whether the IHA has adequately addressed all relevant issues, as determined by HUD, giving preferences to IHAs which request assistance for:

(1) Group 1, projects having emergency conditions that pose an immediate threat (*i.e.*, must be corrected within one year of funding approval) to tenant health or safety. Funding is limited to correction of emergency conditions and may not be used for substantial rehabilitation. Emergency conditions include all testing as required by § 905.555 (a) and (c) and abatement as required by § 905.565(d).

(2) Group 2, projects:

(i) Having conditions that threaten tenant health or safety or having a significant number (10 percent or more) of vacant or substandard units; and

(ii) Located in IHAs that have demonstrated a capability of carrying out the proposed modernization activities (comprehensive, special purpose and homeownership modernization). Within this category, the Secretary may give priority to additional factors, such as cost benefit, severity of lead-based paint hazard abatement needs, and whether the activity is a second or subsequent stage of comprehensive modernization.

(3) Group 3, other projects located in IHAs that have demonstrated a capability of carrying out the proposed modernization activities (comprehensive, special purpose and homeownership modernization). The Secretary may give priority to factors which demonstrate that the modernization will result in the greatest cost benefit.

(i) *Final Application.* Upon notification from HUD, the IHA shall submit to the HUD office a final application which shall contain:

(1) For each project, an identification of and an estimate of the total costs of replacement of the equipment, system or structural elements that would normally be replaced (assuming routine and timely maintenance is performed) over the remaining period of the ACC or during the 30-year period beginning on the date of submission of the final application, whichever period is longer. This estimate shall include an estimate of such costs accrued for the period which ends upon the date on which the final application is made and an estimate of the costs which will accrue during each 12-month period after the final application;

(2) A comprehensive assessment of physical and management improvement needs, described in paragraph (e)(2) of

this section, and a plan for making the improvements and replacements and for meeting the needs. The plan shall include:

(i) A schedule of actions to be completed over a period of not greater than five years from the date of approval of the application, within each 12-month period covered by the plan, and which are necessary to make the physical improvements and to upgrade the management and operation (see paragraph (g)(l) of this section);

(ii) The estimated cost of each action;

(iii) A project operating budget for each 12-month period covered by the plan, excluding modernization costs; and

(iv) An estimate of the financial resources to be available from all sources and the amounts of modernization funds to be requested for each 12-month period covered by the plan.

(3) An organization and staffing plan, stating the proposed organization, staffing and inspection of the modernization program.

(4) An IHA report on compliance by the local governing body with the terms of the Cooperation Agreement, or as embodied by the Tribal Ordinance as applicable for certain IHAs, and any additional services or facilities that the IHA plans to request from the local governing body.

(5) A resolution by the IHA Board of Commissioners, approving the final application and certifying that:

(i) The IHA will comply with all policies, procedures and requirements prescribed by HUD for the modernization, including implementation of the Modernization in a timely, efficient and economical manner;

(ii) The estimated costs of the modernization program cannot be funded from current operating funds;

(iii) The proposed physical work meets the modernization standards;

(iv) The IHA has complied with the Indian preference requirements specified in § 905.120;

(v) The IHA has complied with applicable civil rights requirements as described in § 905.115;

(vi) The IHA has complied with tenant/homebuyer participation requirements under §§ 905.620 and 905.625;

(vii) The IHA has furnished a copy of the flood insurance policy to HUD or determined that flood insurance is not required under § 905.125(b);

(viii) The IHA will comply (where applicable) with requirements for the physically handicapped under § 905.125(f);

(ix) Where the proposed modernization involves the temporary or permanent rehousing of tenants, the IHA will ensure nondiscrimination in the selection of tenants to be rehoused, determination of which tenants require temporary and permanent rehousing, assignment of tenants within the IHA, and provision of assistance to tenants being rehoused; and

(x) The IHA will comply with local and state public health testing requirements, as described in Subpart F.

(6) For comprehensive or special purpose modernization or for homeownership modernization involving energy conservation or utilities, an energy audit, as described in Subpart I.

(7) Special provisions for excepted categories—

(i) *Special purpose modernization.* For a project under special purpose modernization, the IHA shall limit the items required in paragraph (i)(2)(i) of this section to only those special purpose work items.

(ii) *Emergency modernization.* For a project under emergency modernization, the IHA shall omit from the final application the items required in paragraphs (i)(1), (i)(2)(iii) and (iv), and (i)(3) and (4) of this section and limit the items required in paragraph (i)(2)(i) of this section to only those emergency work items.

(iii) *Homeownership modernization.* For a project under homeownership modernization, the IHA shall omit from the final application the items required in paragraphs (i)(1) and (i)(2)(iii) and (iv) of this section, and limit the items required in paragraph (i)(2)(i) of this section to only those homeownership work items. The IHA shall include in the final application a listing of the units to be included in the modernization program and the estimated cost attributed to each home.

(Approved by the Office of Management and Budget under OMB Control number 2577–0044, except for paragraph (i)(6)(x), which was approved under OMB control number 2577–0090)

(j) *ACC Amendment.* After HUD approval of the final application, the IHA shall enter into an ACC amendment to obtain modernization funds. [Approved by the Office of Management and Budget under OMB Control Number 2577–0044.]

§ 905.615 Modernization Project.

(a) For purposes of funding modernization, each modernization program approved for an IHA shall be treated as a separate Modernization Project. The Modernization Project may include improvements to one or more projects. Improvements to a single project may be included in more than one Modernization Project.

(b) HUD and the IHA shall enter into an ACC amendment for each Modernization Project. The ACC amendment shall require lower income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC).

§ 905.620 Tenant participation.

For a rental project only, before submission of the preliminary application, the IHA shall consult with the tenants regarding its intent to submit an application for modernization funds. Before the joint review, the IHA shall notify the tenants of the project to be modernized and the tenant organization, if any, of the proposed modernization program, afford tenants a reasonable opportunity to present their views on the proposed program and alternatives to it, and give full and serious consideration to tenant recommendations. At the joint review, the IHA shall provide the tenants and HUD with a copy of and an evaluation of tenant recommendations, indicating the reasons for IHA acceptance or rejection, consistent with HUD requirements and the IHA's own determination of efficiency, economy and need. The IHA also shall provide a copy of this evaluation to the tenants and the tenant organization, if any, of the approved work items. The provisions of this section do not apply to proposed work items of an emergency nature, affecting the life, health and safety of tenants. However, the IHA shall inform tenants of approved emergency work items.

(Approved by the Office of Management and Budget under OMB control number 2577–0048)

§ 905.625 Homebuyer participation.

(a) For a homeownership project only, before the joint review, the IHA shall discuss the modernization program with the homebuyer families of the project to be modernized and advise them of the effect of the modernization on the terms of the homebuyer agreements. The IHA shall afford the homebuyer families a reasonable opportunity to present their views on the proposed program and give full and serious consideration to their recommendations consistent with HUD requirements and the IHA's own determination of efficiency, economy and need.

(b) The IHA shall inform each homebuyer family that:

(1) To participate, it must be in substantial compliance with the terms of its homebuyer agreement;

(2) It will have an opportunity to express its views and preferences with respect to the modernization of its home;

(3) The purchase price and the amortization period will be increased as provided in § 906.630;

(4) It will have an opportunity to participate in the final inspection of the work to determine completion in accordance with the requirements; and

(5) Participation in the program is optional.

(c) The IHA shall provide each homebuyer family with a copy of the IHA's evaluation of its recommendations, the tentative decisions reached on the modernization program to be submitted to the HUD office, the estimated cost of the proposed modernization program, and the amount of the cost to be attributed to its home.

(d) If the homebuyer family decides to participate in the modernization program with respect to any of the proposed work items, it must agree in writing that its homebuyer agreement will be amended upon approval of the final application to provide that, as a result of the amount of modernization cost attributed to its home, the purchase price and the amortization period will be increased as provided in § 905.630.

(e) Any homebuyer family may decide to participate without risk to its homebuyer status.

(f) Before submission of the final application, the IHA shall obtain a signed agreement from each participating homebuyer family that it will amend its homebuyer agreement upon approval of the final application. The IHA shall retain copies of the signed agreements in its files for inspection by the HUD office.

(g) The provisions of paragraphs (b) through (f) of this section do not apply where modernization work is limited to correction of development deficiencies, conduct of energy audits or undertaking of cost-effective energy conservation measures.

(Approval by the Office of Management and Budget under OMB control number 2577–0048)

§ 905.630 Special requirements for homeownership projects.

(a) Promptly after HUD approval of the Final Application, each homebuyer family shall execute an amendment to its Homebuyer Agreement, reflecting an increase in the purchase price of its home and an extension of the amortization period in accordance with paragraphs (b) and (c) of this section, except where the modernization work is limited to the correction of development deficiencies, conduct of energy audits or undertaking of cost-effective energy conservation measures.

(b) For Turnkey III and Mutual Help projects that have purchase price schedules:

(1) The amount of estimated modernization cost attributable to the home, as shown in the HUD-approved final application, shall be added to the homebuyer's purchase price as initially determined for Turnkey III or Mutual Help projects.

(2) The period of the homebuyer's current purchase price schedule shall be extended by the same percentage as the percentage of increase in the homebuyer's purchase price. The new purchase price schedule shall:

(i) Show monthly amortization of the new purchase price over a period commencing on the same day as the original purchase price schedule and terminating at the end of the extended period; and

(ii) Be computed on the basis of the same interest rate as used for the current purchase price schedule.

(3) If a modernization program is approved for a project after one or more earlier modernization programs for the same project, the total amount of modernization cost attributable to the home under the prior modernization program(s) shall be included as part of the homebuyer's initial purchase price in applying the provisions of paragraphs (b)(1) and (2) of this section.

(c) For Mutual Help and Turnkey III projects that do not have purchase price schedules:

(1) These projects do not involve purchase price schedules for amortization of the homebuyer's purchase price over a fixed period of time because the homebuyer's purchase price in these projects is based on the unamortized balance of the portion of the project's development debt attributable to the home. Consequently, it is necessary to establish a separate schedule for the amortization of the estimated modernization cost attributable to the home, as shown by the HUD-approved final application.

(2) The IHA shall furnish to the homebuyer a schedule showing monthly amortization of the estimated modernization cost attributable to the home, at the minimum loan interest rate specified in the ACC for the modernization project, over a period commencing on the first day of the month after the date of original occupancy of the home by the homebuyer and terminating at the end of the period determined as follows:

(i) Divide the amount of the estimated modernization cost attributable to the home (including the total amount of modernization cost attributable to the home under prior modernization programs, if any) by the amount of the current HUD-approved estimated replacement cost of the home.

(ii) Multiply this amount by 25, round the result to the next higher number and add that number to 25. This is the number of years to be used as the period for the modernization amortization schedule.

(iii) The purchase price for the unit shall be the sum of (A) the balance of the debt attributable to the home and (B) the amount remaining on the modernization schedule at the time of settlement.

§ 905.635 Special requirements for section 23 Leased Housing Bond-Financed projects.

A section 23 Leased Housing Bond-Financed project is eligible for modernization only if HUD determines that the project has met the following conditions:

(a) The project was financed by the issuance of bonds;

(b) Clear title to the project will be conveyed to or vested in the IHA at the end of the section 23 lease term;

(c) There are no legal obstacles affecting the IHA's use of the property as Indian housing during the 20-year period of the modernization;

(d) After completion of the modernization, the project will have a remaining useful life of at least 20 years and it is in the financial interest of the Federal Government to improve the project; and

(e) The project is covered by a cooperation agreement between the IHA and local governing body during the 20-year period of the modernization.

§ 905.640 Contracting requirements.

(a) *Compliance with State, tribal and local law and Federal requirements.* The IHA shall comply with State, tribal and local laws and Federal requirements applicable to bidding and contract awards. (See § 905.125 (c) and (d) for wage rate requirements.)

(b) *Competitive bidding requirements.* For each construction or equipment contract over $10,000, the IHA shall conduct competitive bidding, except for procurement under the HUD Consolidated Supply Program (see § 905.350(d)). (See §§ 905.120 and 905.230 for requirements with respect to Indian preference.)

(c) *Bonding requirements.* For all construction or equipment contracts of $10,000 or more, the contractor shall furnish a performance and payment bond for 100 percent of the contract price or, as may be required by law, separate performance and payment bonds, each for 50 percent or more of the contract price, or a 20 percent cash escrow or a 25 percent letter of credit.

(d) *IHA agreement with architect/engineer.* (1) The IHA shall obtain architectural/engineering services through the competitive negotiation process, except where FFY 1981 or subsequent year funds are being used to finance additional services under an existing contract.

(2) The IHA and its contractors shall pay HUD-determined prevailing wage rates to all architects, technical engineers, draftsmen and technicians employed in the modernization of a project.

(e) *Construction and bid documents.* The IHA shall comply with HUD requirements either to submit for HUD approval complete construction and bid documents before inviting bids or to certify to receipt of the required architect's/engineer's certification, that the construction documents accurately reflect HUD-approved work, and that the bid documents are complete and include all mandatory items.

(Approved by the Office of Management and Budget under OMB control number 2577–0039)

(f) *Contract award.* The IHA shall obtain HUD approval of the proposed award of modernization construction and equipment contracts if the bid amount exceeds the HUD-approved budget amount or the IHA receives a single bid. In all other instances, the IHA shall comply with HUD requirements either to submit the proposed award for HUD approval or to make the award without HUD approval after the IHA has certified that the bidding procedures and award were conducted in compliance with State, tribal or local laws and Federal requirements; that the award does not exceed the approved budget amount and is not being made on the basis of a single bid; and that HUD clearance has been obtained for the award under previous participation procedures, including absence from the HUD Consolidated List of Debarred, Suspended or Ineligible Contractors and Grantees.

(g) *Change orders.* Except in an emergency endangering life or property, the IHA shall comply with HUD requirements either to submit the proposed contract changes for HUD approval or to certify that the proposed work is within the general scope of the contract, that the proposed work cannot be postponed and is necessary and economical, and that any additional costs are within the latest HUD-approved budget or otherwise approved by HUD.

(Approved by the Office of Management and Budget under OMB control numbers 2577–0020)

(h) *Construction requirements.* The IHA shall submit to the HUD office periodic progress reports and shall submit all contract settlement documents for HUD approval.

(i) *Management improvement contracts.* The IHA shall obtain consultant services through the competitive negotiation process. The IHA shall submit both proposals and contracts for management improvements, as well as contract changes, for prior HUD approval.

(j) *Insurance.* The IHA shall contract for insurance, as prescribed by HUD, to cover the additional exposures created by the modernization activities and to reflect the increased value of the buildings after modernization.

(Under section 13(b) of OMB Circular A–40, OMB has waived the requirement that the information collection requirement contained in paragraph (d) must be reviewed and assigned an OMB control number. The information collection requirements contained in paragraph (e) were approved by the Office of Management and Budget (OMB) under control numbers 2577–0039 and 2577–0049. The collection requirements in paragraphs (f), (g), and (h) were approved under control number 2577–0039. The collection requirements in paragraph (i) were approved under control number 2577–0049)

§ 905.645 Modernization financing.

To request modernization funds against the approved modernization program, the IHA shall:

(a) Consult informally with the HUD office as to the amount of modernization funds needed for the time period in question and the immediacy of need. Direct advances shall be approved only where the IHA has submitted a copy of actual billing and to the total amount of the IHA's outstanding direct advances, when added to the amount of direct advances currently requested, does not exceed the total modernization cost.

(b) Submit a request to the HUD office for only the amount of modernization funds needed for the time period in question and support the request with a written justification, in a form prescribed by HUD. The amount of financial assistance made available for any one fiscal year may not exceed the sum of the amounts determined necessary by HUD to:

(1) Undertake the actions specified for the year in the schedule submitted under § 905.610(i)(2);

(2) Fund the replacement costs identified under § 905.610(i)(1), which have accrued for the period ending at the beginning of such year, but have not been previously paid;

(3) Reimburse the IHA for the cost of developing the plan described in § 905.610(i)(2), less any amount provided the IHA with respect to such year under paragraph (b)(4) of this section, subject to the limitation set forth in § 905.605(d); and

(4) Enable a financially distressed IHA to develop a plan, subject to the limitation set forth in § 905.605(d).

(c) Submit the latest required progress reports under § 905.650, unless the first required report is not yet due.

(d) No financial assistance shall be made available to an IHA for any year after the first year unless HUD determines that the IHA has made substantial efforts to meet the objectives for the preceding year under the Plan described in § 905.610(i)(2).

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 2577–0043. The information collection requirements in paragraph (c) were approved under control number 2577–0049)

§ 905.650 Progress reporting.

For each quarter until completion of the modernization program, the IHA shall submit, in a form prescribed by HUD, to the HUD office:

(a) A report on modernization fund expenditures; and

(b) A narrative report on management improvement progress, where applicable.

(Information collection requirements were approved by the Office of Management and Budget under control number 2577–0049)

§ 905.655 Budget revisions.

The IHA shall not incur any modernization cost in excess of the total approved budget. The IHA shall submit a revision of the budget, in a form prescribed by HUD for prior HUD approval if the IHA plans (within the total approved modernization budget) to:

(a) Delete or substantially revise approved work items;

(b) Add new work items; or

(c) Incur modernization costs in excess of the approved budget amount for:

(1) A work item; or

(2) Any project.

(Approved by the Office of Management and Budget under OMB control number 2577–0044 for modernization undertaken with FFY 1982 and subsequent year funds)

§ 905.660 On-site inspections.

The IHA shall provide, by contract or otherwise, adequate and competent supervisory and inspection personnel during modernization, whether work is performed by contract or force account labor and with or without the services of an architect/engineer, to assure work quality and progress.

§ 905.665 Fiscal closeout of a modernization program.

Upon completion of a modernization program, the IHA shall submit the actual modernization cost certificate, in a form prescribed by HUD, to the HUD office for review, audit verification and approval. The audit shall follow the requirements of 24 CFR Part 44 (Single Audit Act of 1984). If the audited modernization cost certificate indicates that excess funds have been approved, the IHA shall dispose of the excess funds as directed by HUD. If the audited modernization cost certificate discloses unauthorized expenditures, the IHA shall take such corrective actions as HUD may direct.

(Approved by the Office of Management and Budget under OMB control number 2577–0049)

§ 905.670 Modernization and energy conservation standards.

(a) All improvements funded under this part, which may include alterations, betterments, additions, replacements or non-routine maintenance, shall meet the HUD modernization standards, described in paragraph (b) of this section and established to provide decent, safe and sanitary living conditions in IHA-owned housing, and the HUD energy conservation standards for cost-effective energy conserving improvement in such projects, described in paragraph (c) of this section.

(b) The modernization standards are standards which will provide decent, safe and sanitary living conditions in Indian housing, including corrections of violations of basic health and safety codes, and address all deficiencies, including those related to deferred maintenance, in order to meet the intent of HUD's minimum property standards as they could reasonably be applied to existing housing. In addition, these standards cover improvements relating to site and building security. The modernization standards are contained in HUD Handbook 7485.2, as revised, Public and Indian Housing Modernization Standards, and in other documents cited in the Handbook.

(c) The energy conservation standards are standards for the installation of cost-effective energy conserving improvements, including solar energy systems. The energy conservation standards provide for the conducting of energy audits, including cost-benefit analyses of energy saving opportunities, in order to determine which measures will be cost effective in conserving energy. The energy conservation standards are contained in the HUD Workbook, Energy Conservation for Housing, and in other documents cited in the Workbook.

Subpart H—Annual Contributions for Operating Subsidy

§ 905.701 Purpose and applicability.

(a) *Implementation of section 9(a).* The purpose of this subpart is to establish standards and policies for the distribution of operating subsidy in accordance with section 9(a) of the United States Housing Act of 1937, 42 U.S.C. 1437g. Section 9(a) authorizes the Secretary of Housing and Urban Development (HUD) to make annual contributions for the operation of IHA-owned rental housing (operating subsidy). This subpart establishes standards for the cost of providing comparable services as determined in accordance with criteria or a formula representing the operations of a prototype well-managed project. These standards, policies and procedures are called the Performance Funding System (PFS). The provisions of PFS are intended to recognize and give an incentive for efficient and economical management and to avoid the expenditure of Federal funds to compensate for excessive costs attributable to poor or inefficient management. PFS is intended to provide the incentive and financial discipline for excessively high-cost IHAs to improve their management efficiency.

(b) *Applicability.* PFS is applicable to all IHA-owned rental units under Annual Contributions Contracts. PFS applies to IHAs that have not received operating subsidy payments previously, but are eligible for such payments under PFS. PFS is not applicable to the Section 23 Leased Housing Program, the Section 23 Housing Assistance Payments Program, the Section 8 Housing Assistance Payments Program, the Mutual-Help Program, or the Turnkey III or Turnkey IV Homeownership Opportunity Programs. PFS is not applicable to housing owned by the IHAs of the Virgin Islands, Puerto Rico, Guam, and Alaska. Operating subsidy payments to these IHAs will be based upon operating budgets approved by HUD on a case-by-case basis.

§ 905.705 Determination of amount of operating subsidy under PFS.

The amount of operating subsidy for which each IHA is eligible shall be determined as follows: The projected operating income level is subtracted from the total expense level (Allowable Expense Level plus Utilities Expense Level). These amounts are per-unit per-month dollar amounts, and must be multipled by the Unit Months Available. Transition funding, if applicable, and other costs as specified in § 905.720 (b)-(d) are then added to this total in order to determine the total amount of operating subsidy for the requested budget year, exclusive of consideration of the cost of an independent audit. As an independent operating subsidy eligibility factor, an IHA may receive operating subsidy in an amount, approved by HUD, equal to the actual or estimated cost of the independent audit to be prorated to operations of the IHA-owned rental housing (under § 905.720(a)). See § 905.730 regarding adjustments.

§ 905.710 Computation of Allowable Expense Level.

The IHA shall compute its Allowable Expense Level (AEL) using forms prescribed by HUD, as follows:

(a) *Computation of Base Year Expense Level.* The Base Year Expense Level includes payments in lieu of taxes (PILOT) required by a Cooperation Agreement even if PILOT is not included in the approved operating budget for the base year because of a waiver of the requirements by the local taxing jurisdiction(s). The base year expense level includes all other operating expenditures as reflected in the IHA's operating budget for the base year approved by HUD except the following:

(1) Utilities expense;

(2) Cost of an independent audit;

(3) Adjustments applicable to budget years before the base year;

(4) Expenditures supported by supplemental subsidy payments applicable to budget years before the base year;

(5) All other expenditures that are not normal fiscal year expenditures as to amount or as to the purpose for which expended; and

(6) Expenditures that were funded from a nonrecurring source of income.

(b) *Adjustment.* In compliance with the above six exclusions, the IHA shall adjust the AEL by excluding any of these items from the base year expense level if this has not already been

accomplished. If such adjustment is made in the second or some later fiscal year of the PFS, the AEL shall be adjusted in the year in which the adjustment is made, but the adjustment shall not be applied retroactively. If the IHA does not make these adjustments, the HUD Field Office shall compute the adjustments.

(c) *Computation of Formula Expense Level.* The IHA shall compute its formula expense level in accordance with a HUD prescribed formula that estimates the cost of operating an average unit in a particular IHA's inventory. The formula takes into account such data as the average number of bedrooms per unit, the average age of buildings, the average height of buildings, and the relative regional operating cost. It uses weights and a local inflation factor assigned each year to derive a formula expense level for the current year and the requested budget year. The weights of the formula, the formula itself, and the "range" are subject to updating by HUD annually or at any other time. This updating will be accomplished by publication in the **Federal Register**, or by notification given directly to IHAs, whichever is considered appropriate.

(d) *Computation of Allowable Expense Level.* The IHA shall compute its Allowable Expense Level, using the term "range" to mean the spread from $10.31 below the base year formula expense level to $10.31 above it—subject to updating of the dollar amount, as follows:

(1) *Allowable Expense Level for first budget year under PFS where Base Year Expense Level does not exceed top limit of Range.* Every IHA whose base year expense level is below the top limit of the range shall compute its AEL for the first budget year under PFS by adding the following to its base year expense level (before adjustment under § 905.730 (a) or (b)):

(i) Any increase approved by HUD in accordance with § 905.730;

(ii) The increase (decrease) between the formula expense level for the base year and the formula expense level for the first budget year under PFS; and

(iii) The sum of the base year expense level, and any amounts described in paragraphs (d)(1) (i) and (ii) of this section multiplied by the local inflation factor.

(2) *Allowable Expense Level for first budget year under PFS where Base Year Expense Level is above the top of the Range.* Every IHA whose base year expense level is above the top of the range shall compute its AEL for the first budget year under PFS by adding the following to its top limit of the range (not to its base year expense level, as in paragraph (d)(1) of this section):

(i) The increase (decrease) between the formula expense level for the base year and the formula expense level or the first budget year under PFS;

(ii) The sum of the figure equal to the top limit of its range and the increase (decrease) described in paragraph (d)(2)(i) of this section, multiplied by the local inflation factor. (If the base year expense level is above the allowable expense level, computed as provided above, the IHA may be eligible for transition funding under § 905.735.)

(3) *Allowable Expense Level for first budget year under PFS for a new project.* A new project of a new IHA or a new project of an existing IHA that the IHA decides to place under a separate ACC, which did not have a sufficient number of units available for occupancy in the base year to have a level of operations representative of a full fiscal year of operation is considered to be a "new project". The AEL for the first budget year under PFS for a "new project" will be based on the AEL for a comparable project, as determined by the HUD Field Office. The IHA may suggest a project or projects it believes to be comparable.

(4) *Allowable Expense Level for budget years after the first budget year under PFS that begins on or after April 1, 1986.* For each budget year after the first budget year under PFS that begin on or after April 1, 1986, the AEL shall be computed as follows:

(i) The allowable expense level shall be increased by any increase to the AEL approved by HUD under § 905.720(c);

(ii) The AEL for the current budget year also shall be increased (or decreased) by either:

(A) If the IHA has not experienced a change in the number of its units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on paragraph (d)(4)(ii)(B) of this section, the AEL shall be increased by one-half of one percent (.5 percent); or

(B) If the IHA has experienced a change in the number of units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on this paragraph (d)(4)(ii)(B), it shall use the increase (decrease) between the formula expense level for the current budget year and the formula expense level for the requested budget year. The IHA characteristics that shall be used to compute the formula expense level for the current budget year shall be the same as those that were used for the requested budget year when the last adjustment to the AEL was made based on this paragraph (d)(4)(ii)(B), except that the number of interim years in which the .5 percent adjustment was made under paragraph (d)(4)(ii)(A) shall be added to the average age that was used for the last adjustment; and

(iii) The amount computed in accordance with paragraphs (d)(4) (i) and (ii) of this section shall be multiplied by the local inflation factor.

Example:

FY 1987. Assume that: (1) The IHA has experienced no change in the number of its units, (2) the AEL for the IHA's FY 1986 is $64.00, and (3) the applicable local inflation factor is 6 percent (expressed as 1.06). The AEL for FY 1987 is $68.18, computed as follows:

1. Allowable Expense Level for FY 1986	$64.00
2. Delta: Increase (or Decrease) in Formula Expense Level ($64.00 × .5 percent)	.32
3. Sum (line 1 plus line 2)	64.32
4. Local Inflation Factor	1.06
5. Allowable Expense Level for FY 1987 (line 3 multiplied by line 4)	$68.18

FY 1988. Assume that the IHA has deprogrammed (*e.g.*, demolished or sold) a project that represents seven percent of its units, and that the last time an adjustment to the AEL was made based on paragraph (d)(4)(ii)(B) was in its FY 1985, at which time the IHA had the following characteristics for its requested budget year: Average age of 10 years, average project height of 5 stories, and average unit size of 4 bedrooms. The formula expense level for the current budget year is calculated using 12 years (10 years plus two years in which the standard .5 percent adjustment was used), 5 stories and 4 bedrooms.

Also assume that that formula expense level calculated based on these characteristics is $70.00 and that the IHA average characteristics for the requested budget year for now an average age of 8 years, average project height of 4 stories and average unit size of 2 bedrooms, resulting in a formula expense level for the requested budget year of $68.00. The formula expense level for the requested budget year, therefore, decreases by $2.00. Assuming that the local inflation factor is 4.5% (expressed as 1.045), the AEL for FY 1988 is $69.16, computed as follows:

1. Allowable Expense Level for FY 1987	$68.18
2. Delta (or Decrease) in Formula Expense Level	(2.00)
3. Sum (line 1 plus line 2)	66.18
4. Local Inflation Factor	1.045
5. Allowable Expense Level for FY 1988 (line 3 multiplied by line 4)	$69.16

It should be noted that the Delta in line 2 of the example reflects the application of the formula weights, constant and local inflation factor for the requested budget year applied first to the IHA characteristics for the current

budget year and then to the IHA characteristics for the requested budget year, to determine the respective formula expense levels. The local inflation factor shown on line 4 of the example is the same one used in determining the formula expense levels.

(5) *Adjustment of Allowable Expense Level for budget years after the first budget year under PFS.* HUD may adjust the AEL of budget years after the first year under PFS under the provisions of § 905.710(b) or § 905.720(c).

§ 905.715 Computation of utilities expense level.

(a) *General.* In recognition of the rapid rises which occur in utilities costs, the wide diversity among IHAs as to types of utilities services used and the manner in which utilities payments are allocated between IHAs and tenants, and the fact that utilities rates charged by suppliers are beyond the control of the IHA, the PFS treats utilities expenses separately from other IHA expenses. Utilities expenses are, therefore, excluded from the IHA's allowable expense level and the PFS provides for computation of the amount of operating subsidy for utilities costs based upon a calculated utilities expense of each IHA. Accordingly, the IHA's utilities expense level for the requested budget year shall be computed by multiplying the allowable utilities consumption level (AUCL) per-unit per-month for each utility, determined as provided in paragraph (c) of this section, by the projected utility rate determined as provided in paragraph (b) of this section. The AUCL for space heating utilities will be adjusted after the end of the affected fiscal year pursuant to the instructions of paragraph (d) of this section.

(Approved by the Office of Management and Budget under OMB control number 2577–0029)

(b) *Utilities rates.* The currently applicable rates, with consideration of adjustments and pass-throughs, in effect at the time the operating budget is submitted to HUD will be used as the utilities rates for the requested budget year, except that, when the appropriate utility commission has, before the date of submission of the operating budget to HUD, approved and published rate changes to be applicable during the requested budget year, the future approved rates may be used as the utilities rates for the entire requested budget year.

(c) *Computation of Utilities Consumption Level.* The AUCL used to compute the utilities expense level of an IHA for the requested budget year will be based upon the availability of consumption data. For project utilities where consumption data is available for the entire rolling base period, the computation will be in accordance with paragraph (c)(1) of this section. For project utilities (other than new projects) where the consumption data is not available for the entire rolling base period, the computation will be in accordance with paragraph (c)(2) of this section. For new projects, the computation will be in accordance with paragraph (c)(3) of this section. The AUCL for all of an IHA's projects is the sum of the amounts determined using paragraphs (c)(1), (2) and (3) of this section, as appropriate.

(1) *Rolling Base Period System.* For project utilities with consumption data for the entire rolling base period, the AUCL is the average amount consumed per unit per month during the rolling base period, adjusted in accordance with paragraph (d) of this section. The IHA shall determine the average amount of each of the utilities consumed during the rolling base period (*i.e.*, the 36-month period ending 12 months prior to the first day of the requested budget year).

(i) *IHA fiscal years affected.* The rolling base period shall be used to compute the AUCL submitted with the operating budgets.

(ii) An example of a rolling base is as follows:

PHA fiscal year (affected fiscal year)		Rolling base period	
Beginning	Ending	Begins	Ends
1–1–83	12–31–83 (1st year)	1–1–79	12–31–81
1–1–84	12–31–84 (2nd year)	1–1–80	13–31–82

(2) Alternative method where data is not available for the entire rolling base peirod:

(i) If the IHA has not maintained or cannot recapture consumption data regarding a particular utility from its records for the whole rolling base period mentioned in paragraph (c)(1) of this section, it shall submit consumption data for that utility for the last 24 months of its rolling base period to the HUD Field Office for approval. It this is not possible, it shall submit consumption data for the last 12 months of its rolling base period. The IHA also shall submit a written explanation of the reasons that data for the whole rolling base period is unavailable.

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(ii) In those cases where an IHA has not maintained or cannot recapture consumption data for a utility for the entire rolling base period, comparable consumption for the greatest of either 36, 24 or 12 months, as needed, shall be used for the utility for which the data is lacking. The comparable consumption shall be estimated based upon the consumption experienced during the rolling base period of comparable project(s) which comparable utility delivery systems and occupancy. The use of actual and comparable consumption by each IHA, other than those IHAs defined as new projects in paragraph (c)(3) of this section, will be determined by the availability of complete data for the entire 36-month rolling base period. Appropriate utility consumption records, satisfactory to HUD, shall be developed and maintained by all IHAs so that a 36-month rolling average utility consumption per unit per month under paragraph (c)(1) of this section can be determined.

(iii) If an IHA cannot develop the consumption data for the rolling base period or for 12 or 24 months of the rolling base period, either from its own project(s) data, or by using comparable consumption data the actual per-unit per-month utility expenses stated in paragraph (e) of this section shall be used as the utilities expense level and no change factor shall be applied.

(3) *Computation of Allowable Utilities Consumption Levels for New Projects.* (i) A new project, for the purpose of establishing the rolling base period and the utilities expense level, is defined as either:

(A) A project that had not been in operation during at least 12 months of the rolling base period, or a project that enters management after the rolling base period and before the end of the requested budget year, or

(B) A project that during or after the rolling base period, has experienced conversion from one energy source to another; interruptable service; deprogrammed units, a switch from tenant-purchased to IHA-supplied utilities; or a switch from IHA-supplied to tenant-pruchased utilities.

(ii) The actual consumption for new projects shall be determined so as not to distort the rolling base period in accordance with a method prescribed by HUD.

(d) *Adjustment to utilities used for space heating.* For project utilities with consumption data for the entire rolling base period, and for new projects, consumption of utilities used for space heating shall be adjusted, after the end of the affected year, using a change factor as follows:

(1) *Adjustment of the rolling base period data.*— (i) *Use of Change Factors.* A change factor will be developed each year by HUD that indicates the relationship of the affected IHA fiscal year Heating Degree Days (HDD) to the average HDD of the rolling base period. This change factor is to be used to establish an AUCL for utilities used for space heating which reflects the severity of the winter weather of the affected IHA fiscal year. The change factors are developed by the National Climatic Center for the Department of Commerce for each established standard weather division of the country, by IHA fiscal year. Change factors will be supplied by HUD to the IHAs. When a change factor is greater than 1.000, it means that the HDD of the affected fiscal year were greater than the average annual HDD of the rolling base period. An example of the effect of the change factor on the rolling base period consumption is:

Assume:

Affected fiscal year HDD—5,250
Rolling Base Period average HDD—5,000
Rolling Base Period average annual consumption for heating purposes—1,000 gallons

Results:

Change Factor is (5,250 divided by 5,000)=1.050
Adjusted Rolling Base Period average consumption for heating purposes (1,000×1.050)=1,050 gallons

(ii) *Application of Change Factor to Consumption of the Rolling Base Period.* The change factor is to be applied only to the consumption readings of meters of utilities, or gallons of oil, or tons of coal used for the purpose of generating heat for dwelling units and other IHA associated buildings. The change factor shall not be applied to the consumption readings of meters of utilities not used for the purpose of generating heat; *e.g.*, water and sewer or electricity used solely for non-heating purposes. The change factor shall be applied to the total consumption reading of meters of utilities, or gallons of oil, or tons of coal used for heating even though the same meter or same energy source is used for other purposes; e.g., heating and cooking gas usage metered on the same meter or oil used for space heating and also heating of water. Such consumption for each fiscal year of the rolling base period shall be adjusted by the change factor. The adjusted consumption for each year shall be totalled. These totals then will be averaged. The consumption readings of meters of utilities not used for heating (not adjusted by the change factor) shall be included in the total consumption.

EXAMPLE SHOWING APPLICATION OF CHANGE FACTOR

	Base years		
	1st year	2nd year	3rd year
Gas meters used for heating:			
No. 1234 (In therms)	15,000	18,000	17,000
No. 2345	10,000	12,000	11,000
Subtotal	25,000	30,000	28,000
Change Factor (HUD supplied)	x1.050	x1.050	x1.050
Subtotal	26,250	31,500	29,400
Gas meter not used for heating:			
No. 3456	2,500	2,600	2,650
Total adjusted allowable gas consumption level	28,750	34,100	32,050

IHAs will be required to use change factors of less than 1.000. Change factors are listed by county. If an IHA manages units in more than one county and those counties have different change factors, the above calculation shall be done considering the units in each county and each county's assigned change factor. If an IHA manages units in an independent city not within the jurisdiction of a county, it shall:

(A) If within one county, use that county's change factor; or

(B) If the city abuts more than one county, use the average of the change factors of the contiguous counties.

(2) *Adjusted Comsumption for New Projects.*—(i) *Use of Change Factor.* For new projects, the IHA shall apply the change factor to the HUD approved consumption level of utilities used for heating.

(ii) *Application of Change Factor to Consumption of New Projects.* The annual AUCL for new projects shall be adjusted by applying the change factor to the estimated consumption where the utility is used for heating in part or in total. This consumption shall be from a comparable project during the permissible rolling base period. Any other consumption of this utility which is not used for heating shall not be adjusted by the change factor, but the estimated annual consumption based upon data from a comparable project during the permissible rolling base period shall be added to the adjusted consumption.

(e) *Utilities Expense Level Where Consumption Data for the Full Rolling Base Period is Unavailable.* If an IHA does not obtain the consumption data for the entire rolling base period, or for 12 or 24 months of the rolling base period, either for its own project(s) or by using comparable consumption data as required in paragraph (c)(2) of this section, it shall request HUD Field Office approval to use actual per-unit per-month utility expenses. These expenses shall exclude utilities labor and other utilities expenses. The actual per-unit per-month utility expenses shall be taken from the year-end statement of operating receipts and expenditures Form HUD–52599 (Office of Management and Budget approval number 2577–0067), prepared for the IHA fiscal year which ended 12 months before the beginning of the IHA requested budget year (*e.g.*, for an IHA fiscal year beginning January 1, 1983, the IHA would use data from the fiscal year ended December 31, 1981). No change factor shall be applied to actual per-unit per-month utility expenses, and subsequent adjustments will not be approved for a budget year for which the utility expense level is established based upon actual per-unit per-month utility expenses.

(f) *Adjustments.* IHAs shall provide information for adjustments of utilities expense levels in accordance with § 905.730(c), which requires an adjustment based upon a comparison of actual experience to the estimated level. The estimated level will have been adjusted in accordance with paragraph (d) of this section.

§ 905.720 Other costs.

(a) *Costs of Independent audits.* (1) Eligibility to receive operating subsidy for independent audits is considered separately from the PFS. However, the IHA shall not request, nor will HUD approve, an operating subsidy for the cost of an independent audit if the audit has been funded by subsidy in a prior year or the subsidy would create residual receipts after provision for the operating reserve. The IHA's estimate of cost of the independent audit is subject to adjustment by HUD. If the IHA requires assistance in determining the amount of cost to be estimated, the HUD Field Office should be contacted.

(2) An IHA that is required by the Single Audit Act (see 24 CFR Part 44) to conduct a regular independent audit may receive operating subsidy to cover the cost of the audit. The amount shall be prorated between the IHA's development cost budget and its operating budget, as appropriate. The estimated cost of an independent audit, applicable to the operations of IHA-owned rental housing, is not included in the allowable expense level, but it is allowed in full in computing the amount of operating subsidy under § 905.705.

(3) An IHA that is exempt from the audit requirements of the Single Audit Act (24 CFR Part 44) may receive

operating subsidy to offset the cost of an independent audit chargeable to operations (after the end of the initial operating period) if the IHA chooses to have an audit.

(b) *Costs Attributable to Units Approved for Deprogramming and Vacant.* Costs for these units may be eligible for inclusion, but must be limited to the minimum services and protection necessary to protect and preserve the units until the units are deprogrammed. Costs attributable to units temporarily unavailable for occupancy because they are utilized for IHA related activities are not eligible for inclusion. In determining the PFS operating subsidy, these units shall not be included in the calculation of unit months available. Units approved for deprogramming shall be listed by the IHA and supporting documentation regarding direct costs attributable to such units shall be included as part of the operating budget in which the IHA requests operating subsidy for these units. If the IHA requires assistance in this matter, the HUD Field Office should be contacted.

(c) *Costs attributable to changes in Federal law or regulation.* In the event that HUD determines that enactment of a Federal law or revision in HUD or other Federal regulation has caused or will cause a significant increase in expenditures of a continuing nature above the allowable expense level and utilities expense level, and upon a determination that sufficient other funds are not available to cover the required expenditures, HUD may in HUD's sole discretion decide to prescribe a procedure under which the IHA may apply for or may receive an increase in operating subsidy.

(d) *Costs beyond the control of the IHA.* Costs attributable to unique circumstances that are beyond the control of the IHA and were not reflected in the IHA's base year expense level may be considered for supplemental operating subsidy funding. Where costs were reflected in the IHA's base year expense level, but the rate of increase for such costs is greater than the prescribed PFS inflation rate(s), then the increase in excess of that provided by the inflation rate may be considered for supplemental operating subsidy funding. The IHA must submit to the HUD Field Office complete documentation relating to those cost items which it claims to be beyond its control. Such documentation shall not be submitted as part of the requested operating budget, but shall be submitted separately as an addendum to the budget. The IHA also must show that these additional costs cannot be funded from its own resources. In the event that excess funds are available after making all payments approvable under §§ 905.108 and 905.705 of these regulations, HUD may, in HUD's sole discretion, solicit, evaluate and approve or disapprove, in full or in part, these requests for additional operating subsidy for costs beyond the control of the IHA.

(Approved by the Office of Management and Budget under OMB control number 2577-0026)

§ 905.725 Projected operating income level.

(a) *Policy.* PFS determines the amount of operating subsidy for a particular IHA based in part upon a projection of the actual dwelling rental income and other income for the particular IHA. The projection of dwelling rental income is obtained by computing the average monthly dwelling rental charge per unit for the IHA, and projecting this amount for the requested budget year by applying an upward trend factor (subject to updating) of 3 percent, and multiplying this amount by the projected occupancy percentage for the requested budget year. Nondwelling income is projected by the IHA subject to adjustment by HUD. There are special provisions for projection of dwelling rental income for new projects.

(b) *Computation of projected average monthly dwelling rental income.* The projected average monthly dwelling rental income per unit for the IHA is computed as follows:

(1) *Average monthly dwelling rental charge per unit.* The dollar amount of the average monthly dwelling rental charge per unit shall be computed on the basis of the total dwelling rental charges (total of the adjusted rent roll amounts) for all project units, as shown on the rent roll control and analysis of dwelling rent charges, which the IHA is required to maintain, for the first day of the month which is six months before the first day of the requested budget year, except that if a change in the total of the rent rolls has occurred in a subsequent month which is before the beginning of the requested budget year and before the submission of the requested budget year operating budget, the IHA shall use the latest changed rent roll for the purpose of the computation. This aggregate dollar amount shall be divided by the number of occupied dwelling units as of the same date.

(2) *Three percent increase.* The average monthly dwelling rental charge per unit, computed under paragraph (b)(1) of this section, is increased by 3 percent to obtain the projected average monthly dwelling rental charge per unit of the IHA for the requested budget year.

(3) *Projected occupancy percentage.* The IHA shall determine its projected percentage of occupancy for all project units (projected occupancy percentage) as follows:

(i) *High occupancy IHAs.* If the IHA's actual occupancy percentage (see § 905.765) is equal to or greater than 97%, the IHA's projected occupancy percentage is 97%

(ii) *High occupancy IHAs exclusive of scheduled modernization.* If the IHA's actual occupancy percentage (see § 905.765) is less than 97% solely because of vacant, on-schedule modernization units described in paragraph (b)(3)(v), of this section, the IHA's projected occupancy percentage is its actual occupancy percentage. An IHA may also use its actual occupancy percentage as its projected occupancy percentage if the IHA has five or fewer vacant units other than vacant, on-schedule modernization units described in paragraph (b)(3)(v) of this section.

(iii) *Low occupancy IHAs with an approved Comprehensive Occupancy Plan (COP).* If the IHA has an actual occupancy percentage (see § 905.765) less than 97% and more than five vacant units, not solely because of vacant, on-schedule modernization units described in paragraph (b)(3)(v) of this section, and if the IHA has a HUD-approved COP, the IHA's projected occupancy percentage is determined under § 905.765(h).

(iv) *Low occupancy IHAs without an approved COP.* (A) The IHA shall use 97% as its projected occupancy percentage, if the IHA:

(*1*) Has an actual occupancy percentage (see § 905.765) less than 97% and has more than five vacant units, not solely because of vacant, on-schedule modernization units described in paragraph (b)(3)(v) of this section; and the IHA:

(*2*)(*i*) Has completed the term of its approved COP but has not achieved a 97% actual occupancy percentage or has not had five or fewer vacant units other than vacant, on-schedule modernization units described in paragraph (b)(3)(v) of this section, or

(*ii*) Is authorized to submit a COP but elects not to submit one, or

(*iii*) Submits a COP that is disapproved by HUD.

(B) Notwithstanding the requirement in paragraph (b)(3)(iv)(A) of this section that 97% be the projected occupancy percentage, a low occupancy IHA which satisfies all the conditions described in paragraph (b)(3)(iv)(A)(*2*)(*i*) of this section may adjust the 97% projected

occupancy percentage to discount units that are vacant for reasons beyond its control, as provided in § 905.770(g).

(v) *Vacant, on-schedule modernization units.* Vacant, on-schedule modernization units are vacant units in an otherwise occupiable project that has received funding for modernization through the comprehensive improvement assistance program (Subpart G) or other sources; and for which

(A) It is expected that the vacant units will be occupied on completion of modernization work;

(B) The IHA has a schedule for carrying out the modernization which is acceptable to HUD; and

(C) The modernization work is on schedule.

(4) *Projected average monthly dwelling rental income.* The projected occupancy percentage under paragraph (b)(3) of this section shall be multiplied by the projected average monthly dwelling rental charge under paragraph (b)(2) of this section to obtain the projected monthly dwelling rental income per unit.

(c) *Projected average monthly dwelling rental charge per unit for new projects.* The projected average monthly dwelling rental charge for new projects that were not available for occupancy during the budget year before the requested budget year and which will reach the end of the initial operating period (EIOP) within the first nine months of the requested budget year shall be calculated as follows:

(1) If the IHA has another project or projects under management which are comparable in terms of elderly and nonelderly tenant composition, the IHA shall use the projected average monthly dwelling rental charge for such project or projects.

(2) If the IHA has no other projects which are comparable in terms of elderly and nonelderly tenant composition, the HUD Field Office will provide the projected average monthly dwelling rental charge for such project or projects, based on comparable projects located in the area.

(d) *Estimate of additional dwelling rental income.* After implementation of the provisions of any legislation enacted or any HUD administrative action taken after the effective date of these regulations, which affects rent paid by tenants of projects, each IHA shall submit a revision of its annual operating budget showing an estimate of any change in rental income which it anticipates as the result of the implementation of said provisions. HUD shall have complete discretion to adjust the projected average monthly dwelling rental charge per unit to reflect the IHA's estimate of change or, in the absence of this submission, to reflect HUD's estimate of such change. HUD also shall have complete discretion to reduce or increase the operating subsidy approved for the IHA current fiscal year in an amount equivalent to the change in the rental income.

(e) *IHA's estimate of income other than dwelling rental income*—(1) *Investment income.* IHAs with an estimated average cash balance of less than $20,000 shall make a reasonable estimate of investment income for the requested budget year. IHAs with an estimated average cash balance of $20,000 or more shall estimate interest on general fund investments based on the estimated average yield for 91-day Treasury bills for the IHA's requested budget year (yield information will be provided by HUD). The determination of average cash balance will allow a deduction of $10,000, plus $10 per unit for each unit over 1,000, subject to a total maximum deduction of $250,000. In all cases, the estimated investment income amount shall be subject to HUD approval. (See § 905.730(b).)

(2) *Other income.* All IHAs shall estimate other income based on past experience and a reasonable projection for the requested budget year, which estimate shall be subject to HUD approval.

(3) *Total.* The estimated total amount of income from investments and other income, as approved, shall be divided by the number of unit months available to obtain a per-unit per-month amount. Such amount shall be added to the projected average dwelling rental income per unit to obtain the projected operating income level.

(f) *Required adjustments to estimates.* The IHA shall submit year-end adjustments of projected operating income levels in accordance with § 905.703(b), which covers investment income.

(Information collection requirements contained in paragraphs (e) and (f) of this section have been approved by the Office of Management and Budget under control number 2577–0071)

§ 905.730 Adjustments.

Adjustment information submitted to HUD under this section must be accompanied by an original or revised operating budget.

(a) *Adjustment of base year expense level.*—(1) *Eligibility.* An IHA with projects that have been in management for at least one full fiscal year, for which operating subsidy is being requested under the formula for the first time, may, during its first budget year under PFS, request HUD to increase its base year expense level. Included in this category are existing IHAs requesting subsidy for a project or projects in operation at least one full fiscal year under separate ACC for which operating subsidy has never been paid, except for IPA audit costs. This request may be granted by HUD, in its discretion, only where the IHA establishes to HUD's satisfaction that the base year expense level computed under § 905.710(a) will result in operating subsidy at a level insufficient to support a reasonable level of essential services. The approved increase cannot exceed the lesser of the per-unit per-month amount by which the top of the range exceeds the base year expense level or $10.31.

(2) *Procedure.* An IHA that is eligible for an adjustment under paragraph (a)(1) of this section may only make a request for such adjustment once for projects under a particular ACC, at the time it submits the operating budget for the first budget year under PFS. Such request shall be submitted to the HUD Field Office, which will review, modify as necessary, and approve or disapprove the request. A request under this paragraph must include a calculation of the amount per-unit per-month of requested increase in the base year expense level, and must show the requested increase as a percentage of the base year expense level.

(Approved by the Office of Management and Budget under OMB approval number 2577–0071)

(b) *Adjustments to estimated investment income.* An IHA that has an estimated average cash balance of at least $20,000 must submit a year-end adjustment to the estimated amount of investment income that was used to determine subsidy eligibility at the beginning of the IHA's fiscal year. The amount of the adjustment will be the difference between the estimate and a target investment income amount based on the actual average yield on 91-day Treasury bills for the IHA's fiscal year being adjusted and the actual average cash balance available for investment during the IHA's fiscal year, computed in accordance with HUD requirements. HUD will provide the IHA with the actual average yield on 91-day Treasury bills for the IHA's fiscal year. Failure of an IHA to submit the required adjustment of investment income by the date due may, in the discretion of HUD, result in the withholding of approval of future obligation of operating subsidies until the adjustment is received.

(c) *Adjustments to Utilities Expense Level.* An IHA receiving operating subsidy under § 905.705, excluding those

IHAs that receive operating subsidy solely for IPA audit (§ 905.720(a)), must submit a year-end adjustment regarding the utility expense level approved for operating subsidy eligibility purposes. This adjustment, which will compare the actual utility expense and consumption for the IHA fiscal year to the estimates used for subsidy eligibility purposes, shall be submitted on forms prescribed by HUD. This request shall be submitted to the HUD Field Office by a deadline established by HUD, which will be during the IHA fiscal year following the IHA fiscal year for which an operating subsidy was received by the IHA, exclusive of a subsidy solely for IPA audit costs. Failure to submit the required adjustment of the utilities expense level by the due date may, in the discretion of HUD, result in the withholding of approval of future obligation of operating subsidies until it is received. Adjustments under this subsection normally will be made in the IHA fiscal year following the year for which the adjustment is applicable, except as provided in paragraph (c)(5) of this section or unless a repayment plan is necessary as noted in paragraph (d) of this section.

(1) A decrease in utilities expense level because of decreased utility rates—to the extent funded by operating subsidy—will be deducted by HUD from future operating subsidy payments.

(2) An increase in utilities expense level because of increased utility rates—to the extent funded by operating subsidy—will be fully funded by residual receipts, if available during that fiscal year, or by increased operating subsidy, subject to availability of funds.

(3) Fifty percent of any decrease in utilities expense level attributable to decreased consumption will be retained by the IHA; 50 percent will be offset by HUD against subsequent payment of operating subsidy.

(4) An increase in utilities expense level attributable to increased consumption will be fully funded by residual receipts after provision for reserves, if available; if not available and if the increase would result in a reduction of the operating reserve below the authorized maximum, 50 percent of the amount of the reduction below such maximum will be funded by increased operating subsidy payments, subject to the availability of funds, if such excess utility consumption was attributable to causes that were beyond the control of the IHA.

(5) In emergency cases, where an IHA establishes to HUD's satisfaction that a severe financial crisis would result from a utility rate increase, an adjustment covering only the rate increase may be submitted to HUD at any time during the IHA's current budget year. Unlike the adjustments mentioned in paragraph (c)(1) through (c)(4) of this section, this adjustment shall be submitted to the HUD Field Office by revision of the original submission of the estimated utility expense level for the fiscal year to be adjusted.

(6) Supporting documentation substantiating the requested adjustments shall be retained by the IHA pending HUD audit.

(d) *Requests for adjustments to projected average monthly dwelling rental income.* Requests for adjustments to projected average monthly dwelling rental income may be made as follows:

(1) *Criteria for granting request.* An IHA may request an adjustment to projected average monthly dwelling rental income under PFS if the IHA can establish to HUD's satisfaction that the projected amount computed under § 905.725 was not attained because of circumstances beyond the control of the IHA, such as a substantial increase in general unemployment in the locality, or because of a revision of the IHA's rent schedule which has been approved by HUD. The IHA must also demonstrate to HUD's satisfaction that it has established and is effectively implementing tenant selection criteria in compliance with HUD requirements. HUD shall have complete discretion to approve completely, approve in part or deny any requested adjustments to projected average monthly dwelling rental income.

(2) *Procedure.* A request for an adjustment under this subsection shall be submitted to the HUD Field Office by a deadline established by HUD, which will be within twelve months following the IHA's fiscal year being adjusted. In emergency cases, however, where an IHA establishes to HUD's satisfaction that decreased rental income would result in a severe financial crisis, a request for adjustments may be submitted to HUD at an earlier time.

(e) *Additional HUD-initiated adjustments.* Notwithstanding any other provisions of this subpart, HUD may at any time make an upward or downward adjustment in the amount of the IHA's operating subsidy as as result of data subsequently available to HUD which alters projections upon which the approved operating subsidy was based. Normally adjustments shall be made in total in the IHA fiscal year in which the needed adjustment is determined; however, if a downward adjustment would cause a severe financial hardship on the IHA, the HUD Field Office may establish a recovery schedule which represents the minimum number of years needed for repayment.

(Information collection requirements contained in paragraph (a) of this section have been approved by the Office of Management and Budget under control numbers 2577–0029 and 2577–0026. Information collection requirements contained in paragraph (b) of this section have been approved by OMB under control number 2577–0071. Information collection requirements contained in paragraph (c) have been approved by OMB under control numbers 2577–0029 and 2577–0026)

§ 905.735 Transition funding for excessive high-cost IHAs.

If an IHA's base year expense level exceeds its allowable expense level, computed as provided in § 905.710, for any budget year under PFS, the IHA may be eligible for transition funding. Transition funding shall be an amount not to exceed the difference between the base year expense level and the allowable expense level for the requested budget year, multiplied by the number of units months available. HUD shall have the right to discontinue payment of all or part of the transition funding in the event HUD at any time determines that the IHA has not achieved a satisfactory level of management efficiency, or is not making efforts satisfactory to HUD to improve its management performance.

§ 905.740 Operating reserves.

(a) *Use of operating reserves.* HUD will not approve an operating budget or budget or operating budget revision which proposes to use operating reserve funds that would cause the reserve balance to fall below 40 percent of the maximum operating reserve for the requested budget year, unless the IHA fully documents that such decreased reserve level will be sufficient to meet the working capital needs of the IHA. If operating reserves are used in excess of the amount approved by HUD in the operating budget, HUD is not obligated to provide additional operating subsidy to restore such funds.

(b) *Augmentation of the operating reserve.* The PFS does not specifically provide operating subsidy to augment the IHA's operating reserve. However, the full amount of the IHA's operating subsidy eligibility may be provided to the IHA, and some part or all of this amount may be used to augment the operating reserve as long as the estimated year-end reserve balance, as shown in the approved operating budget for the year for which the funds are requested, does not exceed the maximum operating reserve amount as shown in the same operating budget.

§ 905.745 Operating budget submission and approval.

(a) *Required board resolution.* In addition to other budget documentation required by HUD, each operating budget revision submitted to HUD in accordance with the provisions of PFS shall include a certified copy of a resolution of the board of commissioners stating that the board has reviewed and approved the operating budget or operating budget revision and has found:

(1) That the proposed expenditures are necessary in the efficient and economical operation of the housing for the purpose of serving lower income families.

(2) That the financial plan is reasonable in that:

(i) It indicates a source of funding adequate to cover all proposed expenditures.

(ii) It does not provide for use of Federal funding in excess of that payable under the provisions of these regulations.

(3) That all proposed rental charges and expenditures will be consistent with provisions of law and the annual contributions contract.

(b) *HUD limited operating budget review.* Detailed HUD review of the operating budgets or operating budget revisions normally will be limited to the prescribed PFS forms. Under this procedure, although the operating budget normally will not be reviewed in depth, the operating reserve calculation in all cases will be examined and budget modifications will be made where the operating reserve provisions are not in accordance with HUD requirements. In addition, if the Field Office finds that an operating budget is incomplete, includes illegal or ineligible expenditures, mathematical errors or errors in the application of accounting procedures, or is otherwise unacceptable, the HUD Field Office shall modify or disapprove the operating budget. The HUD Field Office may at any time require the submission by the IHA of further information regarding an operating budget or operating budget revision.

(c) *Withdrawal by HUD of limited operating budget review.* HUD reserves the right at any time to deviate from the limited operating budget review provided in paragraph (b) of this section if HUD finds that the IHA is operating its program in a manner which threatens the future serviceability, efficiency, economy, or stability of the housing that it operates. If such action is deemed necessary, the HUD Field Office will normally notify the IHA before its submission of the operating budget that HUD will subject the operating budget to a detailed review. When the IHA's operation no longer threatens the future serviceability, efficiency, economy or stability of the housing, HUD will notify the IHA that the limited review as provided in paragraph (b) of this section is being reinstated.

(Approved by the Office of Management and Budget under OMB control number 2577–0026.)

§ 905.750 Payment procedure for operating subsidy under PFS.

(a) *General.* Subject to the availability of funds, payments of operating subsidy under PFS shall be made generally by electronic funds transfers, based on a schedule submitted by the IHA and approved by HUD, reflecting the IHA's projected cash needs. The schedule may provide for several payments per month. If an IHA has an unanticipated, immediate need for disbursement of approved operating subsidy, it may make an informal request to HUD to revise the approved schedule. (Requests by telephone are acceptable.)

(b) *Payments procedure.* In the event that the amount of operating subsidy has not been determined by HUD as of the beginning of an IHA's budget year under these PFS regulations, annual or monthly or quarterly payments of operating subsidy shall be made, as provided in paragraph (a) of this section, based upon the amount of the IHA's operating subsidy for the previous budget year or such other amount as HUD may determine to be appropriate.

(c) *Availability of funds.* In the event that insufficient funds are available to make payments approvable under PFS for operating subsidy payable by HUD, HUD shall have complete discretion to revise, on a pro rata basis or other basis established by HUD, the amounts of operating subsidy to be paid to IHAs.

§ 905.755 Payments of operating subsidy conditioned upon reexamination of income of families in occupancy.

(a) *Policy.* The income of each family must be reexamined at least annually (see Subpart C). IHAs must be in compliance with this reexamination requirement to be eligible to receive full operating subsidy payments.

(b) *IHAs in compliance with requirements.* Each submission of the original operating budget for a fiscal year shall be accompanied by a certification by the IHA that it is in compliance with the annual income reexamination requirements and that rents have been or will be adjusted in accordance with Subpart C of this part.

(c) *IHAs not in compliance with requirements.* Any IHA not in compliance with the annual income reexamination requirement at the time of operating budget submission shall furnish to the HUD Field Office a copy of the procedure it is using to attain compliance and a statement of the number of families that have undergone reexamination during the twelve months preceding the date of the operating budget submission, or the revision thereof. If, on the basis of such submission, or any other information, the Field Office Director determines that the IHA is not substantially in compliance with the annual income reexamination requirement, he or she shall withhold payments to which the IHA might otherwise be entitled under this part, equal to his or her estimate of the loss of rental income to the IHA resulting from its failure to comply with those requirements.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB control number 2577–0026)

§ 905.760 Determining actual occupancy percentage.

For each requested budget year beginning on or after July 1, 1986, the IHA shall determine the percentage of occupancy for all project units included in the unit months available (actual occupancy percentage), at its option, either (a) for the last day of the month that ends six months before the beginning of the requested budget year, or (b) based on the average occupancy during the month ending six months before the beginning of the requested budget year. If the IHA elects to use an average, it shall maintain a record of its computation of its actual occupancy percentage. The actual occupancy percentage shall be adjusted to reflect expected changes in occupancy because of modernization, new development, demolition, or disposition in order to reflect the expected average occupancy rate throughout the year. If, after that date, there are changes, up or down, in occupancy because of modernization, new development, demolition, or disposition not reflected in the adjustment, the IHA shall submit a budget revision to reflect the actual change in occupancy due to these actions.

§ 905.765 Comprehensive Occupancy Plan requirements.

(a) *IHAs that may submit a Comprehensive Occupancy Plan.* An IHA may prepare and submit a COP to HUD in accordance with the provision of this section:

(1) For its first requested budget year beginning on or after July 1, 1986, if the

IHA has an actual occupancy percentage (§ 905.760) less than 97%, and has more than five vacant units, not solely because of vacant, on-schedule modernization units; or

(2) For a requested budget year beginning on or after July 1, 1987, if:

(i) The IHA projects an actual occupancy percentage (§ 905.760) for the requested budget year of less than 97% and has more than five vacant units, other than vacant, on-schedule modernization units;

(ii) The IHA is not currently a low occupancy IHA, that is, the IHA had an actual occupancy percentage determined under § 905.760 for the current requested budget year that equalled or exceeded 97% or had five or fewer vacant units other than vacant, on-schedule modernization units; and

(iii) The IHA is not currently under a COP.

(b) *Comprehensive Occupancy Plan content.* A COP shall provide a general IHA-wide strategy for returning to occupancy or deprogramming all vacant units and a specific strategy for returning to occupancy or deprogramming units for each project that has an occupancy percentage of less than 97%.

(1) The general IHA-wide strategy for returning to occupancy or deprogramming all vacant units shall specify management actions the IHA is taking or intends to take to eliminate vacancies, such as revised occupancy policies, actions to reduce time to return vacated units to occupancy, and identification of the need to use the exception for nonelderly tenants in elderly projects, and shall include a schedule for completing these actions.

(2) The project-specific strategy shall:

(i) Identify each project that has a percentage of occupancy less than 97%.

(ii) State the project-specific actions the IHA is taking or intends to take to eliminate vacancies, such as (A) modernization, (B) demolition, (C) disposition, (D) change in occupancy policy, or (E) physical or management improvements; and

(iii) For each project identified, include a schedule for completing these actions and returning the units to occupancy.

(3) The COP shall also include yearly IHA-wide occupancy goals and yearly occupancy goals for each project with an occupancy rate below 97% stated for each year until there is a projected IHA-wide occupancy rate of at least 97% or an estimate that the IHA will have five or fewer vacant units, excluding units that are vacant, on-schedule modernization units. These goals should reflect the average occupancy percentage for each year. The yearly occupancy goals (both IHA-wide and project specific) for the first year of a COP that is submitted with an IHA's budget for its first requested budget year beginning on or after July 1, 1986, shall take into account actions taken by the IHA from August 2, 1985, to reduce vacancies.

(c) *Time for submitting a Comprehensive Occupancy Plan.* An IHA that submits a COP to HUD for approval in accordance with paragraph (a) of this section shall submit the COP with its budget.

(d) *Maximum term of a Comprehensive Occupancy Plan.* (1) Except as provided in paragraph (d)(2) of this section, a COP:

(i) Submitted for an IHA's first requested budget year beginning on or after July 1, 1986, shall be for a period approval by HUD as reasonable, which shall not exceed five years; or

(ii) Submitted for a requested budget year beginning on or after July 1, 1987, shall be for a period of one or two years, as approved by HUD.

(2) A COP that exceeds the maximum period provided in paragraph (d)(1)(i) or (ii) of this section may be approved only if HUD has given written authorization for such longer period before the approval of the COP.

(e) *Local governing body review.* The IHA shall have the COP reviewed by the local governing body for comment and shall submit any comments from the local governing body to HUD with the COP.

(f) *HUD review of Comprehensive Occupancy Plan.* If HUD fails to approve, disapprove or otherwise substantively comment on a COP within 45 days of receipt of the plan, the IHA-wide yearly occupancy goal for the first year of the COP shall be considered approval for the purpose of determining the IHA's projected occupancy percentage under paragraph (h) of this section.

(g) *Financially or Operationally Troubled IHA.* If an IHA is a financially troubled IHA and has an approved workout plan, the COP shall be made an addendum to the workout plan.

(h) *Projected Occupancy Percentage (Comprehensive Occupancy Plan).* An IHA that has a HUD-approved COP shall use as its projected occupancy percentage for computing its projected operating income level under § 905.725 the greater of

(1) Its actual occupancy percentage, as determined under § 905.760 or

(2) Its approval, yearly IHA-wide occupancy goal, adjusted, as necessary, to discount units that are vacant for reasons beyond the IHA's control, as provided in paragraph (i) of this section.

(i) *Units vacant for reasons beyond an IHA's control.* A vacant unit is considered vacant for reasons beyond an IHA's control only if the unit is located in a project that meets one of the following conditions:

(1) The IHA has applied for modernization, HUD cannot find the project because of lack of sufficient funding, and it is expected that the units will be occupied when the units are modernized.

(2) The vacant units are vacant, on-schedule modernization units.

(3) The units are vacant because of natural disasters, or as a result of a court-ordered, or HUD-approved, constraints relating to Title VI of the Civil Rights Act of 1964, or as a result of litigation that precludes units for being occupied.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB control number 2577–0066)

Subpart I—Energy Audits, Energy, Conservation Measures and Utility Allowances

§ 905.801 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to implement HUD policies in support of national energy conservation goals by reducing energy consumption, with consequent reduction of operating costs of IHA-owned housing projects, by requiring that IHAs conduct energy audits and undertake certain cost-effective, energy conservation measures. Energy audits will determine what energy conservation measures will be cost-effective and will establish priorities for funding those measures found to be cost-effective. This subpart also provides for the establishment of utility allowances for tenants based on reasonable consumption of utilities by an energy-conscious household.

(b) *Applicability.* The provisions of this subpart apply to all IHAs with IHA-owned housing including Mutual Help and Turnkey III. But see limit in § 905.885 to applicability of utility allowance provisions.

§§ 905.805-905.880 [Reserved]

§ 905.885 Utility allowances.

(a) *Applicability.* (1) This section applies to all Indian housing dwelling units except those operated under the Mutual Help Homeownership Program, under Subpart D.

(2) In units where utilities are furnished by the IHA but there are no checkmeters to measure the actual

utilities consumption of the individual units, tenants shall be subject to charges for consumption of tenant-owned major appliances, or for optional functions of IHA-furnished equipment, in accordance with paragraph (e) of this section, but no utility allowance will be established.

(b) *Establishment of utility allowances by IHAs.* (1) IHAs establish allowances for IHA-furnished utilities for all checkmetered utilities and allowances for tenant-purchased utilities for all utilities purchased directly by tenants from the utilities suppliers.

(2) The IHA shall maintain a record that documents the basis on which allowances and scheduled surcharges, and revisions thereof, are established and revised. Such record shall be available for inspection by tenants.

(3) The IHA shall give notice to all tenants of proposed allowances and scheduled surcharges and revisions thereof. Such notice shall be given, in the manner provided in the lease, not less than 60 days before the proposed effective date of the allowances or scheduled surcharges or revisions; shall describe with reasonable particularity the basis for determination of the allowances, scheduled surcharges or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances or scheduled surcharges; shall notify tenants of the place where the IHA's record maintained in accordance with paragaph (b)(2) of this section, is available for inspection; and shall provide all tenants an opportunity to submit written comments during a period expiring not less than 30 days before the proposed effective date of the allowances or scheduled surcharges or revisions. Such written comments shall be retained by the IHA and shall be available for inspection by tenants and, upon request, by HUD.

(4) The IHA shall furnish to HUD, as instructed, a copy of its schedule of allowances and scheduled surcharges, and each revision thereof, promptly upon such schedule becoming effective. Schedules of allowances and scheduled surcharges shall not ordinarily be subject to approval by HUD before becoming effective but will be reviewed in the course of audits or reviews of IHA operations. Following such audits or reviews, HUD may require additional data concerning the IHA's basis for determination of allowances or scheduled surcharges, may require additional or different relevant data to be considered by the IHA in its next annual review on an exception basis, may require that an IHA submit its proposed revision of allowances or scheduled surcharges to HUD for review and approval before such revision being proposed is adopted.

(5) Except where a differnet standard of review is applicable in review procedures governed by applicable State law, the IHA's determinations of allowances, scheduled surcharges and revisions thereof shall be final and valid as to tenants unless found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB control number 2577–0062)

(c) *Categories for establishment of allowances.* Separate allowances shall be established for each utility and for each category of dwelling units determined by the IHA to be reasonably comparable as to factors affecting utility usage. The IHA will establish allowances for different size units, in terms of numbers of bedrooms. Other categories may be established at the discretion of the IHA.

(d) *Period for which allowances are established.*— (1) *IHA-furnished utilities.* Allowances will normally be established on a quarterly basis; however, tenants may be surcharged on a monthly basis. The allowances established may provide for seasonal variations.

(2) *Tenants-purchased utilities.* Monthly allowances shall be established at a uniform monthly amount based on an average monthly utility requirement for a year; however, if the utility supplier does not offer tenants a uniform payment plan, the allowances established may provide for seasonal variations.

(e) *Standards for allowances for utilities.* (1) The objective of an IHA in designing methods of establishing utility allowances for each dwelling unit category and unit size shall be to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment. Stated another way, it should be an objective of the allowance that excess consumption which may result in a surcharge (or absorption of utility cost in excess of the allowance) should be an amount of consumption that is reasonably within the control of a tenant household to avoid.

(2) Allowances for both IHA-furnished and tenant-purchased utilities shall be designed to include such reasonable consumption for major equipment or for utility functions furnished by the IHA for all tenants (*e.g.*, heating furnace, hot water heater), for essential equipment whether or not furnished by the IHA (*e.g.*, range and refrigerator), and for minor items of equipment (such as toasters and radios) furnished by tenants.

(3) The complexity and elaborateness of the methods chosen by the IHA, in its discretion, to achieve the foregoing objective will be dependent upon the data available to the IHA and the extent of the administrative resources reasonably availalbe to the IHA to be devoted to the collection of such data, the formulation of methods of calculation, and actual calculation and monitoring of the allowances. Recommended sources of data for determining reasonable consumption levels include:

(i) Consumption information from the IHA's records or obtained through current reading of checkmeters.

(ii) Consumption data on residential use of utilities obtained from utility suppliers or other sources.

(iii) Engineering calculations based on technical data concerning energy requirements of appliances and equipment and of projects and units having particular characteristics.

(iv) Data concerning energy requirements available from governmental and other sources.

(v) Data obtained from energy audits.

(4) In establishing allowances, the IHA shall take into account relevant factors affecting consumption requirements, including:

(i) The equipment and functions intended to be covered by the allowance for which the utility will be used. For instance, natural gas may be used for cooking or heating domestic water or space heating or any combination of the three.

(ii) The climatic location of the housing projects.

(iii) The size of the dwelling units and the number of occupants per dwelling unit.

(iv) Type of construction and design of the housing project.

(v) The energy efficiency of IHA-supplied appliances and equipment.

(vi) The utility consumption requirements of appliances and equipment whose reasonable consumption is intended to be covered by the total tenant payment.

(vii) The physical condition, including insulation and weatherization, of the housing project.

(viii) Temperature levels intended to be maintained in the unit during the day

and at night, and in cold and warm weather.

(ix) Temperature of domestic hot water.

(f) *Surcharges for excess consumption of IHA-furnished utilities.* (1) For dwelling units subject to allowances for IHA-furnished utilities where checkmeters have been installed, the IHA shall establish surcharges for utility consumption in excess of the allowance. Surcharges may be computed on a straight per unit of purchase basis (e.g., cents per kilowatt hour of electricity) or for stated blocks of excess consumption, and shall be based on the IHA's average utility rate. The basis for calculating such surcharges shall be described in the IHA's schedule of allowances. Changes in the dollar amounts of surcharges based directly on changes in the IHA's average utility rate shall not be subject to the advance notice requirements of this section.

(2) For dwelling units served by IHA-furnished utilities where checkmeters have not been installed, the IHA shall establish schedules of surcharges indicating additional dollar amounts tenants will be required to pay by reason of estimated utility consumption attributable to tenant-owned major appliances or to optional functions, such as air conditioning, of IHA-furnished equipment. Such surcharge schedules shall state the tenant-owned equipment (or functions of IHA-furnished equipment) for which surcharges shall be made and the amounts of such charges, which shall be based on the cost to the IHA of the utility consumption estimated to be attributable to reasonable usage of such equipment.

(g) *Review and revision of allowances.*—(1) *Annual review.* The IHA shall review at least annually the basis on which utility allowances have been established and, if reasonably required in order to continue adherence to the standards stated in paragraph (e) of this section, shall establish revised allowances. The review shall include all changes in circumstances (including completion of comprehensive or special purpose modernization under the Comprehensive Improvement Assistance Program and/or other energy conservation measures implemented by the IHA) indicating probability of a significant change in reasonable consumption requirements and changes in utility rates.

(2) *Revision as a result of rate changes.* The IHA may revise its allowances for tenant-purchased utilities between annual reviews if there is a rate change (including fuel adjustments) and shall be required to do so if such change, by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rates on which such allowances are based. Adjustments to tenant rent as a result of such changes shall be retroactive to the first day of the month following the month in which the last rate change taken into account in such revision became effective.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB control number 2577–0062)

(h) *Individual relief.* Requests for relief from surcharges for excess consumption of IHA-purchased utilities, or from payment of utility supplier billings in excess of the allowances for tenant-purchased utilities, may be granted by the IHA on reasonable grounds, such as special needs of elderly, ill or handicapped tenants, or special factors affecting utility usage not within the control of the tenant, as the IHA shall deem appropriate. The IHA's criteria for granting such relief, and procedures for requesting such relief, shall be adopted at the time the IHA adopts the methods and procedures for determining utility allowances. Notice of the availability of such procedures (including identification of the IHA representative with whom initial contact may be made by tenants), and the IHA's criteria for granting such relief, shall be included in each notice to tenants given in accordance with paragraph (b)(3) of this section and in the information given to new tenants upon admission.

Subpart J—Operation of Projects after Expiration of Initial ACC Term

§ 905.901 Purpose and applicability.

(a) *Purpose.* This subpart specifies methods for extending the effective period of provisions of the ACC relating to project operation beyond the original ACC term. Such an extension provides a contractual basis for continued eligibility for operating subsidy.

(a) *Applicability.* This subpart applies to any Indian housing project which is owned by an IHA and is subject to an ACC under section 5 of the United States Housing Act of 1937, including rental, Turnkey III, or Mutual Help housing. However, it does not apply to the section 8 and section 23 Housing Assistance Payments Programs and the section 10(c) and section 23 Leased Housing Programs.

§ 905.903 Continuing eligibility for operating subsidy; ACC extension.

(a) *Operating subsidy.* After the initial term of the ACC, HUD will pay operating subsidy with respect to a project only in accordance with an ACC amendment providing for extension of the term of the ACC provisions related to project operation for at least ten years after the last payment of HUD assistance. The ACC amendment shall be in the form prescribed by HUD, and shall specify the particular provisions of the ACC that relate to continued project operation and, therefore, remain in effect for the extended ACC term. These provisions shall include a requirement that the IHA execute and file, for public record, an appropriate document evidencing the IHA's covenant not to convey, encumber or make any other disposition of the project without HUD approval for a period of ten years after the receipt of the last payment of HUD assistance.

(b) *Consolidated ACC.* Where a single ACC covers more than one project (consolidated ACC), each annual operating subsidy payable under that ACC is a lump-sum amount which is not divided into discrete amounts for the individual projects subject to the consolidated ACC (see Subpart H of this chapter). Accordingly, if an IHA, before submitting a request for operating subsidy, determines that any project(s) under the consolidated ACC will not require operating subsidy and should not be subject to the provisions of paragraph (a) of this section, the IHA shall accompany its request with a resolution certifying that no operating subsidy shall be used with respect to such project(s) thereafter and that all financial records and accounts shall be kept separately for such project(s). In such cases, the removal of the project(s) from the request for operating subsidy shall be reflected by the inclusion of that number of unit months available for the project(s) when making the calculations, under Subpart H of this chapter, for determination of total amount of operating subsidy payable under the consolidated ACC. In any event, no operating subsidy payable under a consolidated ACC or otherwise shall be used to pay, directly or indirectly, any costs attributable to a project which is ineligible or otherwise excluded from operating subsidy under paragraph (a) of this section. Even if no operating subsidy is received with respect to a project, the IHA remains obligated to maintain and operate the project in accordance with the provisions of the ACC related to project operation so long as those ACC provisions remain in effect.

§ 905.905 ACC extension in absence of current operating subsidy.

Where no operating subsidy is being paid under an ACC, the IHA shall, at least one year before the anticipated ACC expiration date for the project, notify HUD as to whether or not the IHA desires to maintain a basis for receiving operating subsidy with respect to the project after the anticipated ACC expiration date. This notification shall be submitted to the appropriate HUD Field Office in the form of a resolution by the IHA's Board of Commissioners. If the IHA does not desire to maintain a basis for operating subsidy payments with respect to the project after the anticipated ACC expiration date, the resolution shall certify that no operating subsidy shall be utilized with respect to the project after the effective date of this rule and that all financial records and accounts for such a project shall be kept separately. If the IHA does desire to maintain a basis for such operating subsidy payments, the resolution shall include the IHA's request for extension of the term of the ACC provisions related to project operation, for a period of not less than one nor more than 10 years. Upon HUD's receipt of the request, HUD and the IHA shall enter into an ACC amendment effecting the extension for the period requested by the IHA, unless HUD finds that continued operation of the project cannot be justified under the standards set forth in Subpart K.

§ 905.907 HUD approval of disposition or demolition.

During the post-assistance service period of continued operation as lower income housing, HUD may authorize an IHA to dispose of or demolish housing units at any time, in accordance with Subpart K.

Subpart K—Disposition or Demolition of Projects

§ 905.921 Purpose and applicability.

(a) *Purpose.* This subpart sets forth requirements for HUD approval of an IHA's application to dispose of or demolish (in whole or in part) IHA-owned projects assisted under the Act.

(b) *Applicability.* This subpart applies to any Indian housing project which is owned by an IHA and is subject to an ACC under section 5 of the United States Housing Act of 1937, including rental, Turnkey III or Mutual Help housing. However it does not apply to:

(1) IHA-owned Section 8 housing or housing leased under section 10(c) or section 23 of the Act;

(2) Demolition or disposition before the end of the initial operating period (EIOP), as determined under the ACC, of property acquired incident to the development of an Indian housing project (however, this exception does not apply to units occupied or available for occupancy by Indian housing tenants before EIOP);

(3) Conveyance of public housing for the purpose of providing homeownership opportunities for lower income families under the Act;

(4) Leasing of dwelling or nondwelling space incident to the normal operation of the project for Indian housing purposes, as permitted by the ACC;

(5) Reconfiguration of the interior space of buildings (e.g., moving or removing interior walls to change the design, sizes or number of units) without demolition; and

(6) A whole or partial taking by a public or quasi-public entity though the exercise of its power of eminent domain.

§ 905.923 General requirements for HUD approval of disposition/demolition.

HUD will not approve an application for disposition or demolition unless:

(a) The application has been developed in consultation with tenants of the project involved, any tenant organizations for the project, and any IHA-wide tenant organizations that will be affected by the disposition or demolition;

(b) In the case of disposition or demolition involving at least 20 dwelling units or 10 percent of the IHA's total number of Indian housing units, whichever is less, the application has been developed in consultation with the chief executive officer or designee, of the government with which the IHA has a cooperation agreement, if appropriate, covering that project;

(c) Except where no dwelling units are involved, the application contains a certification by the chief executive officer, or designee, of the unit of general government that the proposed activity is consistent with the applicable housing assistance plan;

(d) If any displacement of tenants is involved, the relocation requirements of § 905.925 are satisfied; and

(e) Demolition or disposition will meet the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321, the National Historic Preservation Act of 1966, 16 U.S.C. 469, and related laws, as stated in the Department's regulations at 24 CFR Part 50.

§ 905.925 Relocation of displaced tentants.

(a) Tenants who are to be displaced as a result of disposition or demolition shall be relocated to other decent, safe, sanitary, and affordable housing (at rents no higher than permitted under the Act), which is, to the maximum extent practicable, housing of their choice, on a nondiscriminatory basis, without regard to race, color, religion (creed), national origin, handicap, age, or sex, in compliance with applicable Federal and State laws. Relocation may be to other publicly assisted housing, including housing assisted under Section 8 of the Act and housing available as a result of the Section 8 Housing Voucher Program.

(b) In addition to the provision of relocation housing, assistance to all displaced tenants shall include assistance in finding other suitable housing, including payment of actual, reasonable moving costs, and counseling and advisory services to assure that full choices and real opportunities exist to select relocation housing in a full range of neighborhoods, including areas outside of minority concentration. Tenants are to become eligible for assistance as of the date of receipt of an official notice to move. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 does not apply to displacement as a result of the activities covered by this subpart.

§ 905.927 Specific criteria for HUD approval of disposition requests.

(a) In addition to other applicable requirements of this subpart, HUD will not approve a request for disposition unless HUD determines that retention is not in the best interests of the tenants and the IHA, because at least one of the following criteria is met:

(1) Developmental changes in the area surrounding the project (e.g., density, or industrial or commercial development) adversely affect the health or safety of the tenants or the feasible operation of the project by the IHA.

(2) Disposition will allow the acquisition, develpment or rehabilitation of other properties that will be more efficiently or effectively operated as lower income housing projects, and that will preserve the total amount of lower income housing stock available to the community. Dwelling units eliminated by disposition under this criterion shall be offset by units to be added to the available local inventory of lower income housing utilizing the net proceeds of the disposition. Using such proceeds, additional units may be provided through new construction, acquisition or rehabilitation (including modernization of existing, vacant, uninhabitable public housing). An IHA must be able to demonstrate to the satisfaction of HUD that the additional

units are being provided in connection with the disposition of the property.

(3) There are other factors justifying disposition that HUD determines are consistent with the best interests of the tenants and the IHA that are not inconsistent with other provisions of the Act. As an example, if the property meets any of the criteria for demolition under § 905.929, it may be disposed of under this criterion (§ 905.927(a)(3)) subject to conditions that HUD may impose (*e.g.*, demolition to follow disposition in order to assure abatement of a threat to safety or health).

(b) In the case of disposition of property other than dwelling units, (1) the property is determined by HUD to be excess to the needs of the project (after the end of the initial operating period), or (2) the disposition of the property is incidental to, or does not interfere with, continued operation of the remaining portion of the project.

§ 905.929 General requirements for HUD approval of demolition requests.

In addition to other applicable requirements of this part, HUD will not approve an application for demolition unless HUD determines that at least one of the following criteria is met:

(a) The project, or portion of the project, is obsolete as to physical condition, location, or other factors, making it unusable for housing purposes. Major problems indicative of obsolescence are—

(1) As to physical condition: structural deficiencies, substantial deterioration, or other design or site problems (e.g., severe erosion or flooding);

(2) As to location: physical deterioration of the neighborhood, change from residential to industrial or commercial development, or environmental conditions which jeopardize the suitability of the site for residential use;

(3) Other factors which have seriously affected the marketability, usefulness, or management of the property.

(b) No reasonable program of modifications, in keeping with the Comprehensive Improvement Assistance Program (CIAP) regulations in Subpart G of this part, is feasible to return the project or portion of the project to useful life.

(c) In the case of demolition of only a portion of a project, the demolition will help to assure the useful life of the remaining portion of the project (*e.g.*, to reduce project density).

§ 905.931 IHA application for HUD approval.

Written approval by HUD shall be required before the IHA may undertake any transaction involving demolition or disposition. To request approval, the IHA shall submit an application to the appropriate HUD office that includes the following:

(a) A description of the property involved;

(b) A description of, as well as a timetable for, the specific action proposed (including, in the case of disposition, the specific method proposed);

(c) A statement justifying the proposed disposition or demolition under one or more of the applicable criteria of § 905.927 or § 905.929.

(d) If applicable, a plan for the relocation of tenants who would be displaced by the proposed demolition or disposition (see § 905.925). The relocation plan must at least indicate:

(1) The number of tenants to be displaced;

(2) What counseling and advisory services the IHA plans to provide;

(3) What housing resources are expected to be available to provide housing for displaced tenants;

(4) An estimate of the costs for counseling and advisory services and tenant moving expenses, and the expected source for payment of these costs (see § 905.933); and

(5) The minimum official notice that the IHA will give tenants before they are required to move;

(e) A description of the IHA's consultations with tenants and any tenant organizations (as required under § 905.923(a)), with copies of any written comments which may have been submitted to the IHA and the IHA's evaluation of the comments;

(f) If required under § 905.923(b), a statement by the chief executive officer, or designee, of the government with which the IHA has a cooperation agreement covering that project, indicating that official's comments and recommendations on the proposal;

(g) If required under § 905.923(b), a certification by the chief executive officer, or designee, of the government that the proposed demolition or disposition is consistent with the applicable housing assistance plan;

(h) The estimated balance of the project debt, under the ACC, for development and modernization;

(i) In the case of disposition, an estimate of the fair market value of the property, established on the basis of one independent appraisal unless, as determined by HUD,

(1) More than one appraisal is warranted, or

(2) Another method of valuation is clearly sufficient and the expense of an independent appraisal is unjustified because of the limited nature of the property interest involved or other available data;

(j) In the case of disposition, estimates of the gross and net proceeds to be realized, with an itemization of estimated costs to be paid out of gross proceeds and the proposed use of any net proceeds in accordance with § 905.933;

(k) A copy of a resolution by the IHA's Board of Commissioners approving the application;

(l) If determined to be necessary by HUD, an opinion by the IHA's legal counsel that the proposed action is consistent with applicable requirements of Federal, State, Tribal and local laws; and

(m) Any additional information necessary to support the application and assist HUD in making determinations under this subpart.

§ 905.933 Use of proceeds.

(a) *Disposition.* (1) Where HUD approves the disposition of real property of a project, in whole or in part, the IHA shall dispose of it promptly by public solicitation of bids for not less than fair market value, unless HUD authorizes negotiated sale for reasons found to be in the best interests of the IHA or the Federal government, or for sale for less than fair market value (where permitted by State, Tribal or local law), based on commensurate public benefits to the community, the IHA or the Federal government justifying such an exception. Reasonable costs of disposition, and of relocation of displaced tenants allowable under § 905.925, may be paid by the IHA out of the gross proceeds, as approved by HUD.

(2) Net proceeds (after payment of HUD-approved costs of disposition and relocation under paragraph (a) of this section) shall be used, subject to HUD approval, as follows: first for the retirement of outstanding obligations issued to finance development or modernization of the project, and thereafter for the provision of housing assistance for lower income families, through such measures as modernization of lower income housing or the acquisition, development or rehabilitation of other properties to operate as lower income housing.

(b) *Demolition.* Where HUD has approved demolition of a project, or a portion of a project, and the proposed action is part of a modernization program under CIAP (Subpart G of this part), the costs of demolition and of relocation of displaced tenants may be included in the modernization budget.

§ 905.935 Reports and records.

(a) After HUD approval of disposition or demolition of all or part of a project, the IHA shall keep the appropriate HUD office informed of significant actions in carrying out the disposition or demolition, including any significant delays or other problems. When disposition or demolition is completed, the IHA shall submit to the HUD office a report confirming the action, certifying compliance with all applicable requirements of Federal law and regulations and, in the case of disposition, accounting for the proceeds and costs of disposition.

(b) The IHA shall be responsible for keeping records of its HUD-approved disposition or demolition sufficient for audit by HUD to determine the IHA's compliance with applicable requirements of Federal law and this subpart.

(Approved by the Office of Management and Budget under OMB control number 2577–0075)

Subpart L—Miscellaneous

§ 905.999 Waiver authority.

Upon determination of good cause, the Secretary of Housing and Urban Development may waive any provision of this part, subject to statutory limitations. Each such waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds.

Dated: May 11, 1988.

James E. Baugh,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 88–14435 Filed 6–28–88; 8:45 am]

BILLING CODE 4210-33-M

Federal Register

Wednesday
June 29, 1988

Part III

Department of Energy

10 CFR Part 1015

Collection of Claims Owed the United States; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 1015

Collection of Claims Owed the United States

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) recently proposed regulations to implement the Federal Claims Collection Act of 1966 (31 U.S.C. 3701–3719) as amended by the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1754) (52 FR 43168, November 9, 1987). In response to DOE's proposed regulations, comments were submitted from only one party, a major Federal employees union. In response to these comments, § 1015.2 of the proposed regulations was modified to clarify the applicability of the regulations to collection of claims due from Federal employees. In addition, based on internal review, paragraph 1015.4(a) was modified to provide for actual costs incurred as an alternative basis for determining administrative charges. DOE is now issuing the regulations as modified.

This rule amends Chapter X of Title 10 of the Code of Federal Regulations by adding a new Part 1015, which establishes the overall regulations under which DOE will pursue the collection of claims owed to the United States.

EFFECTIVE DATE: June 29, 1988.

FOR FURTHER INFORMATION CONTACT: Helen O. Sherman, Office of the Controller, 202–586–4860 (FTS 896–4860).

SUPPLEMENTARY INFORMATION: On November 9, 1987 (52 FR 43168), DOE published for comment in the **Federal Register** a proposed rule implementing the Federal Claims Collection Act of 1966 (31 U.S.C. 3701–3719) as amended by the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1754). The proposed rule incorporated the Federal Claims Collection Standards published jointly by the General Accounting Office and the Department of Justice (4 CFR 101–105). The proposal provided procedures by which DOE would:

(a) Collect claims owed to the United States;

(b) Determine and collect interest and other charges on those claims;

(c) Compromise claims; and

(d) Refer unpaid claims for litigation.

Executive Order 12291

This rule has been reviewed in accordance with Executive Order 12291. The rule is not classified as a major rule because it does not meet the criteria for major rules established by that Order.

Regulatory Flexibility Act Certification

This rule will not have a significant impact on a substantial number of small entities (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

No additional information and recordkeeping requirements are imposed by this rule.

National Environmental Policy Act

Promulgation of this rule does not represent a major Federal action with significant environmental impact. Therefore, preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) is not required.

Public Comments

This final rule is based on the notice of proposed rulemaking that DOE published in the **Federal Register** on November 9, 1987 (52 FR 43168), wherein public comments were invited for the 30-day comment period ending December 9, 1987. Public comments were received from only one party, a major Federal employees union. These comments expressed concern regarding the treatment of employee due process rights. DOE 2200.2, *Collection From Employees for Indebtedness to the United States*, provides the Department's procedures for governmentwide collection under 5 U.S.C. 5514. The due process rights of employees under 5 U.S.C. 5514 are addressed therein. To clarify this matter, § 1015.2(a) of the final rule states that Part 1015 provides the procedures for collection of claims by administrative offset under 31 U.S.C. 3716 and that DOE 2200.2 provides the procedures for collection of claims by Federal salary offset under 5 U.S.C. 5514. Additionally, § 1015.2(b) has been modified to reflect that all claims due from Federal employees will be collected in accordance with DOE 2200.2 or successor internal directives.

List of Subjects in 10 CFR Part 1015

Disclosures and referrals, Credit reports, Claims.

In consideration of the foregoing, the Department of Energy hereby amends Chapter X of Title 10 of the Code of Federal Regulations by adding a new Part 1015 as set forth below.

Issued in Washington, DC, June 22, 1988.

Lawrence F. Davenport,

Assistant Secretary, Management and Administration.

Part 1015 is added to 10 CFR Chapter X to read as follows:

PART 1015—COLLECTION OF CLAIMS OWED THE UNITED STATES

Sec.

Authority: 31 U.S.C. 3701–3719; Pub. L. 97–365, 96 Stat. 1754.

§ 1015.1 Purpose.

This part established procedures for the Department of Energy (DOE) to collect, compromise, or terminate collection action on claims of the United States for money or property arising from activities under DOE jurisdiction. It specifies the agency procedures and the rights of the debtor applicable to claims for the payment of debts owned to the United States. It incorporates, as appropriate, the Federal Claims Collection Standards (4 CFR Parts 101–105). It sets forth procedures by which DOE:

(a) Will collect claims owned to the United States;

(b) Will determine and collect interest and other charges on those claims;

(c) Will compromise claims; and

(d) Will refer unpaid claims for litigation.

§ 1015.2 Applicability.

(a) This part applies to all claims due the United States under the Federal Claims Collection Act, as amended by the Debt Collection Act (31 U.S.C. 3701–3719), arising from activities under the jurisdiction of DOE unless such claims are othewise subject to applicable laws or regulations. For purposes of this part, claims include, but are not limited to, amounts due the United States from fees, loans, loan guarantees, overpayments, fines, civil penalties, damages, interest, sale of products and services, and other sources. This part provides the procedures for collection of claims by administrative offset under 31 U.S.C. 3716. DOE 2200.2, *Collection From Employees for Indebtedness to the United States*, provides the procedures for collection of claims by Federal salary offset under 5 U.S.C. 5514. The failure of DOE to include in this part any provision of the Federal Claims Collection Standards does not prevent DOE from applying the provision. The failure of DOE to comply with any

provision of this part or of the Federal Claims Collection Standards shall not be available as a defense to any debtor in tems of affecting the merits of the underlying indebtedness.

(b) All claims due from Federal employees will be collected in accordance with DOE 2200.2, *Collection from Employees for Indebtedness to the United States*, or successor internal directives. DOE 2200.2 provides for hearings as required under 5 U.S.C. 5514 and 4 CFR Part 102.

(c) Claims arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 shall be determined, collected, compromised, terminated, or settled in accordance with regulations published under the authority of 31 U.S.C. 3726 (see 41 CFR Parts 101–141, administered by the Director, Office of Transportation Audits, General Services Administration) and are otherwise excepted from these regulations.

(d) (1) Claims arising out of acquisition contracts, subcontracts, and purchase orders which are subject to the Federal Acquisition Regulation Systems, including the Federal Acquisition Regulation, 48 CFR Subpart 32.6, and the Department of Energy Acquisition Regulations, 48 CFR Subpart 932.6, shall be determined or settled in accordance with those regulations.

(2) Claims arising out of financial assistance instruments (e.g., grants, subgrants, contracts under grants, cooperative agreements, and contracts under cooperative agreements) and loans and loan guarantees shall be determined or settled in accordance with internal DOE directives. Relevant provisions currently are set forth primarily at 10 CFR 600.26 and 10 CFR 600.112(f)

§ 1015.3 Demand for payment.

(a) A total of three progressively stronger written demands at not more than approximately 30-day intervals will normally be made unless a response or other information indicates that a further demand would be futile or unnecessary. When necessary to protect the Government's interest, written demand may be preceded by other appropriate actions under the Federal Claims Collection Standards, including immediate offset, as provided in paragraph (d)(2) of this section, and/or referral for litigation.

(b) The initial written demand for payment should inform the debtor of the following:

(1) The basis for the claim;

(2) The amount of the claim;

(3) Any right to a review of the claim within DOE;

(4) The date by which DOE expects full payment and after which the account is considered delinquent (this is the due date and is normally not more than 30 days from the date the written initial demand was either mailed, hand-delivered, or otherwise transmitted);

(5) The provision for interest, penalties, and administrative charges in accordance with 31 U.S.C. 3717, if payment is not received by the due date (see § 1015.4 for details regarding interest, administrative charges, and penalty charges); and

(6) The DOE's intent to utilize any applicable collection actions made available by the Debt Collection Act of 1982 and the Federal Claims Collection Standards. When determined necessary to protect the Government's interest, DOE may initiate any of the actions available under the referenced Act and/or Standards. These actions may include, but are not limited to, immediate referral for litigation, administrative offset (as provided in paragraph (d)(2) of this section), reports to credit bureaus, and referrals to collection agencies.

(c) If the debt is not paid by the date specified in the initial written demand, two progressively stronger demands shall be sent to the debtor unless a response or other information indicates that additional written demands would either be futile or unnecessay. These written demands will be timed so as to provide an adequate period of time within which the debtor could be expected to respond. While shorter periods of time are acceptable, intervals of approximately 30 days should be sufficient. Depending on the circumstances of the particular case, the demand letters may state:

(1) The amount of any late payment charge (interest, penalties, and administrative charges) added to the debt;

(2) That the delinquent debt may be reported to a credit reporting agency;

(3) That the debt may be referred to a private collection agency for collection;

(4) That the debt may be collected through administrative offset in accordance with the Federal Claims Collection Standards (4 CFR Part 102); and

(5) That the debt may be referred for litigation.

(d)(1) Before collecting a debt by administrative offset, the debtor shall be advised of the following information either in the initial written demand and/or subsequent written demands, or by separate notice of DOE's intent to collect the debt by administrative offset:

(i) Nature and amount of debt;

(ii) Payment due date;

(iii) The intent of DOE to collect by administrative offset (in accordance with the Federal Claims Collection Standards (4 CFR Part 102)), including requesting other Federal agencies to help in the offset whenever possible, if the debtor has not made voluntary payment, has not requested a hearing or review of the claim within DOE as set out in paragraph (d)(1)(v) of this section, or has not made arrangements for payment as set out in paragraph (d)(1)(vi) of this section by the payment due date;

(iv) The right of the debtor to inspect and copy the DOE records related to the claim. Any costs associated therewith shall be borne by the debtor. The debtor shall give reasonable notice in advance to DOE of the date upon which it intends to inspect and copy the records involved;

(v) The right of the debtor to a hearing or review of the claim. DOE shall provide the debtor with a reasonable opportunity for an oral hearing when: (A) An applicable statute authorizes or requires DOE to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or (B) the debtor requests reconsideration of the debt and DOE determines that the question of indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary-type hearing, although DOE will document all significant matters discussed at the hearing. This section does not require an oral hearing with respect to debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity and DOE has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. In administering such a system, DOE is not required to sift through all of the requests received in order to accord oral hearings in those few cases which may involve issues of credibility or veracity. In those cases where an oral hearing is not required by this section, DOE will accord the debtor a "paper" hearing, that is, DOE will make its determination on the request for waiver or reconsideration based upon a review of the written record. If the claim is disputed in full or in part, the debtor's written response to the demand must include a request for review of the claim

within DOE. If the debtor disputes the claim, the debtor shall explain why the debt is incorrect. The explanation should be supported by affidavits, canceled checks, or other relevant information. The written response must reach DOE by the payment due date. A written response received after the payment due date may be accepted if the debtor can show that the delay was due to circumstances beyond the debtor's control or failure to receive notice of the time limit. The debtor's written response shall state the basis for the dispute. If only part of the claim is disputed, the undisputed portion should be paid by the date stated in the initial demand. DOE shall notify the debtor, within 30 days whenever feasible, whether DOE's determination of the debt has been sustained, amended, or canceled. If DOE either sustains or amends its determination, it shall notify the debtor of its intent to collect by administrative offset unless payment is received within 15 days of the mailing of the notification of its decision; and

(vi) The right of the debtor to offer to make a written agreement to repay the amount of the claim. The acceptance of such an agreement is discretionary with DOE. If the debtor requests a repayment arrangement because a payment of the amount due would create a financial hardship, DOE will assess the debtor's financial condition based on financial statements submitted by the debtor. Dependent upon the evaluation of the financial condition of the debtor, DOE and the debtor may agree to a written installment repayment schedule. The debtor should execute a confess-judgment note which specifies all of the terms of the arrangement. The size and frequency of the installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. Interest, administrative charges, and penalty charges shall be provided for in the note. The debtor shall be provided with a written explanation of the consequences of signing a confess-judgment note. The debtor shall sign a statement acknowledging receipt of the written explanation which shall provide that the statement was read and understood before execution of the note and that the note is being signed knowingly and voluntarily. Some form of objective evidence of these facts will be maintained in DOE's file on the debtor.

(2) In cases in which the procedural requirements specified in this paragraph have previously been provided to the debtor in connection with the same debt under some other statutory or regulatory authority, such as pursuant to a notice of audit disallowance, DOE is not required to duplicate those requirements before taking administrative offset. Furthermore, DOE may effect administrative offset against a payment to be made to a debtor prior to completion of the required procedures if failure to take the offset would substantially prejudice the Government's ability to collect the debt and the time before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset will be promptly followed by completion of those procedures. Amounts recovered by administrative offset found not to be owed to DOE shall be promptly refunded.

(e) At any time during the collection cycle, DOE may take any of the actions authorized under this section or under the Federal Claims Collection Standards. These actions include, but are not limited to, reports to credit bureaus, referrals to collection agencies, termination of contract, debarment, and administrative offset, as authorized in 31 U.S.C. 3701–3719.

§ 1015.4 Interest, administrative charges, and penalty charges.

(a) DOE shall assess interest on unpaid claims at the rate of the current value of funds to the Treasury as prescribed by the Secretary of the Treasury on the date the computation of interest begins unless a higher rate of interest is necessary to protect the interests of the Government. DOE shall assess administrative charges to cover the costs of processing and handling overdue claims. Administrative charges will be assessed concurrent with the interest assessment and will be based on actual costs incurred or an average of additional costs incurred in processing and handling claims in similar stages of delinquency. DOE shall assess penalty charges of six percent a year on any part of a debt more than 90 days past due. Such assessment will be retroactive to the first day the debt became delinquent. The imposition of interest, administrative charges, and penalty charges is made in accordance with 31 U.S.C. 3717.

(b) Interest will be computed from the date the initial demand is mailed, hand-delivered, or otherwise transmitted to the debtor. If the claim or any portion thereof is paid within 30 days after the date on which interest began to accrue, the associated interest shall be waived. This period for waiver of interest may be extended in individual cases if there is good cause to do so and it is in the public interest. Interest will only be computed on the principal of the claim and the interest rate will remain fixed for the duration of the indebtedness, except where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement. A new rate which reflects at a minimum the current value of funds to the Treasury at the time the new agreement is executed may be set, if applicable, and interest on interest and related charges may be charged where the debtor has defaulted on a previous repayment agreement. Charges which accrued by were not collected under the defaulted agreement shall be added to the principal to be paid under the new repayment schedule.

(c) DOE may waive interest, administrative charges, or penalty charges if it finds that one or more of the following conditions exist:

(1) The debtor is unable to pay any significant sum toward the claim within a reasonable period of time;

(2) Collection of interest, administrative charges, or penalty charges will jeopardize collection of the principal of the claim; or

(3) It is otherwise in the best interests of the United States, including the situation in which an offset or installment payment agreement is in effect.

(d) *Exemptions.* (1) The provisions of 31 U.S.C. 3717 do not apply:

(i) To debts owed by any State or local government;

(ii) To debts arising under contracts which were executed prior to, and were in effect on (i.e., were not completed as of) October 25, 1982;

(iii) To debts where an applicable statute, regulation required by statute, loan agreement, or contract either prohibits such charges or explicitly fixes the charges that apply to the debts involved; or

(iv) Debts arising under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States.

(2) DOE may, however, assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

§ 1015.5 Responsibility for collection.

(a) Heads of DOE Headquarters Elements and Field Elements or their designees must immediately notify the appropriate finance office of claims arising from their operations. A claim will be recorded and controlled by the responsible finance office upon receipt of documentation from a competent authority establishing the amount due.

(b) The collection of claims under the control of the finance offices will be

aggressively pursued in accordance with the provisions of Part 102 of the Federal Claims Collection Standards (4 CFR Part 102). Whenever feasible, debts owed to the United States, together with interest, administrative charges, and penalty charges, should be collected in full in one lump sum. If the debtor requests installment payments, the finance offices will be responsible for determining the financial hardship of debtors and, when appropriate, shall arrange installment payment schedules. Claims which cannot be collected directly or by administrative offset shall be written off as administratively uncollectible in accordance with authority delegated to the Heads of DOE Field Elements and the Controller.

(c) The Controller or designee, in consultation with the General Counsel or other designated Counsel at Headquarters, or Heads of DOE Field Elements or designees, in consultation with the Chief Counsels or other designated Counsels in field locations, may compromise or suspend or terminate collection action on referred claims that do not exceed $20,000, exclusive of interest, penalties, and administrative charges, in accordance with the Federal Claims Collection Act and the Federal Claims Collection Standards Parts 103 and 104 (4 CFR Parts 103 and 104).

(d) Recommendations to compromise or suspend or terminate collection action on claims that exceed $20,000, exclusive of interest, penalties, and administrative charges, will be referred to the Department of Justice consistent with paragraph (c) of this section and in accordance with the Federal Claims Collection Act and the Federal Claims Collection Standards. Referrals to the Department of Justice shall be made in accordance with 4 CFR Part 105 of the Federal Claims Collection Standards

§ 1015.6 Collection by administrative offset.

(a) *Administrative offset.* (1) Whenever feasible and not otherwise prohibited, after a debtor fails to pay the claim, request a review of the claim, or make an arrangement for payment, DOE shall collect claims under this part by means of administrative offset against obligations of the United States to the debtor, pursuant to 31 U.S.C. 3716. In appropriate circumstances, DOE may give due consideration to the debtor's financial condition or whether offset would tend to substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, offset will normally be inappropriate. This concept generally does not apply, however, where payment is in the form of reimbursement. Determination as to whether collection by administrative offset is feasible will be made by DOE on a case-by-case basis, in the exercise of sound discretion. DOE will consider not only whether administrative offset can be accomplished both practically and legally, but also whether offset is best suited to further and protect all of the Government's interests.

(2) DOE will not initiate administrative offset to collect a debt under 31 U.S.C. 3716 more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably be known by the DOE official or officials who were charged with the responsibility to discover and collect such debt.

(3) DOE is not authorized by 31 U.S.C. 3716 to use administrative offset with respect to:

(i) Debts owed by any State or local government;

(ii) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or

(iii) Any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by another statute.

However, unless otherwise provided for by contract or law, debts or payments which are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

(4) Salary offsets and offsets against military retired pay are governed by 5 U.S.C. 5514.

(5) Collection by administrative offset of amounts payable from the Civil Service Retirement and Disability Fund will be made pursuant to 31 U.S.C. 3716 and 5 U.S.C. 5705 and regulations thereunder.

(6) Collections made by administrative offset under 31 U.S.C. 3716, shall be in accordance with the procedural requirements set forth in § 1015.3(d) of this part.

(b) *Interagency requests.* (1) Requests to DOE by other Federal agencies for administrative offset should be in writing and forwarded to the Department of Energy, Office of the Controller (MA-3), 1000 Independence Avenue, SW., Washington, DC 20585.

(2) Requests by DOE to other Federal agencies holding funds payable to the debtor should be in writing and forwarded, certified return receipt, as specified by that agency in its regulations. If such rule is not readily available or identifiable, the request should be submitted to that agency's office of legal counsel with a request that it be processed in accordance with their internal procedures.

(3) Requests to DOE should be processed within 30 calendar days of receipt. If such processing is not practical or feasible, notice to extend the time period for another 30 calendar days should be forwarded 10 calendar days prior to the expiration of the first 30-day period.

(4) Requests to or from DOE must be accompanied by a written certification that the debtor owes the debt (including the amount) and that the requesting agency has fully complied with the provisions of 4 CFR 102.3. DOE will cooperate with other agencies in effecting collection unless the offset would be otherwise contrary to law.

(5) If administrative offset cannot be effected through DOE or other known Federal agency accounts payable, then DOE will place a complete stop order against amounts otherwise payable to the debtor by placing the name of that debtor on the Department of the Army "List of Contractors Indebted to the United States." If any amounts are discovered under this procedure, they will be offset against the debt owed to DOE provided that applicable provisions of 4 CFR Parts 101–105 have been met and the offset would not otherwise be contrary to law.

§ 1015.7 Settlement of claims.

(a) In accordance with the provisions of 4 CFR Part 103, DOE officials listed in § 1015.5(c) of this part may settle claims not exceeding $20,000, exclusive of interest, penalties, and administrative charges, by compromise at less than the principal of the claim if:

(1) The debtor shows an inability to pay the full amount within a reasonable time or refuses to pay the claim in full and DOE is unable to enforce collection in full within a reasonable time by enforced collection proceedings;

(2) There is real doubt concerning the Government's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or a bona fide dispute as to the facts;

(3) The amount of the claim does not justify the actual foreseeable cost of collecting the claim; or

(4) A combination of the above reasons.

(b) DOE may suspend or terminate collection action in accordance with the terms and procedures contained in 4 CFR Part 104.

§ 1015.8 Referral for litigation.

Claims on which aggressive collection action has been taken in accordance with 4 CFR Part 102 and which cannot be compromised or on which collection action cannot be suspended or terminated under 4 CFR Parts 103 and 104 will be referred to the General Accounting Office or the Department of Justice, as appropriate, in accordance with the procedures in 4 CFR Part 105.

§ 1015.9 Disclosure to consumer reporting agencies and referral to collection agencies.

DOE may disclose delinquent debts to consumer reporting agencies in accordance with 31 U.S.C. 3711(f) and may refer delinquent debts to debt collection agencies under the revised Federal Claims Collection Standards and other applicable authorities. Information will be disclosed to reporting agencies and referred to collection agencies in accordance with the terms and conditions of agreements entered into between the General Services Administration, DOE, and the reporting and collection agencies. The terms and conditions of such agreements shall specify that all of the rights and protections afforded to the debtor under 31 U.S.C. 3711(f) have been fulfilled.

§ 1015.10 Credit report.

In order to aid DOE in making appropriate determinations as to the collection and compromise of claims; the collection of interest, administrative charges, and penalty charges; the use of administrative offset; the use of other collection methods; and the likelihood of collecting the claim, DOE may institute a credit investigation of the debtor at any time following receipt of knowledge of the claim.

[FR Doc. 88-14554 Filed 6-28-88; 8:45 am]

BILLING CODE 6450-01-M

federal register

Wednesday
June 29, 1988

Part IV

Environmental Protection Agency

Preliminary Determination to Cancel Registrations of Aldicarb Products and Availability of Technical Support Document; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/39A; FRL-3407-2]

Preliminary Determination to Cancel Registrations of Aldicarb Products and Notice of Availability of Technical Support Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of preliminary determination.

SUMMARY: This Notice sets forth EPA's preliminary determination regarding the continued registration of pesticide products containing aldicarb and EPA's assessment of the risks and benefits associated with the pesticidal uses of aldicarb. This Notice announces EPA's plan for protecting the nation's ground water from contamination by the registered uses of aldicarb through lable requirements, monitoring, and State Management Plans. This Notice also announces the availability of the Aldicarb Technical Support Document. The Technical Support Document and supporting scientific reviews constitute the technical documents in support of this action.

DATE: Written comments should be received on or before September 27, 1988.

ADDRESS: Submit three copies of written comments, bearing the document control number "OPP-30000/39A" by mail to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 246, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked CBI may be publicly disclosed by EPA without prior notice to the submitter. All written comments and the correspondence index will be available for public inspection and copying in Rm. 236 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Bruce A. Kapner, Special Review Branch, Registration Division (TS-767C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1006, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) (557-5493).

Copies of the Aldicarb Technical Support Document are available from the contact person at the address given above.

SUPPLEMENTARY INFORMATION: This Notice is organized into seven Units. Unit I provides a summary of EPA's proposed actions to regulate the use of aldicarb to prevent or reduce the contamination of ground water. Unit II provides background information on aldicarb and the regulatory history. Unit III provides the legal background. Unit IV provides a summary of the risk and benefit determinations and proposed regulatory actions. Unit V sets forth procedural matters. Unit VI discusses the opportunity for public comment and Unit VII includes information on the Public Docket.

I. Summary of EPA's Proposed Actions

A. Objective

EPA is proposing a new pesticide management approach to prevent unacceptable ground water contamination from the use of aldicarb. The objective of this proposed decision is to manage the use of aldicarb through a variety of both nationally uniform and geographically-specific measures in areas of the country where ground water is vulnerable to contamination. EPA views this proposed decision for aldicarb as the first "real world" illustration of its strategy for addressing its concern for pesticides in ground water.

The key aspect of this new approach is its major emphasis on a strong lead management role by those states where EPA has determined ground water resources are potentially the most vulnerable to unacceptable levels of aldicarb. EPA prefers that these states develop and implement plans to tailor pesticide management measures to specific local ground water protection needs. Acceptable pesticide management plans will serve as the basis for the continued registration of aldicarb within these designated states. EPA believes that such a strong lead management role by the states has the greatest potential for protecting ground water resources while providing for the continued benefits of aldicarb's use through proper management.

B. Background

Aldicarb is an insecticide/nematicide which is registered for use on 14 crops. It is an acutely toxic pesticide which can cause reversible cholinesterase inhibition. Laboratory data both on animals and humans, as well as human incident data, indicate that extremely low levels of aldicarb exposure can produce toxic effects in humans.

Aldicarb has been detected in the ground water of 48 counties of 16 states at levels ranging from 1 to over 500 parts per billion (ppb). EPA's Office of Drinking Water has established a Health Advisory level, the level of exposure in drinking water at which it has been determined that the public health is adequately protected, of 10 ppb for aldicarb. Aldicarb residue levels have been found to exceed the Health Advisory in 25 counties of 11 states.

EPA is concerned with the presence of aldicarb in the nation's ground water and with the potential risks resulting from drinking water contaminated with aldicarb. Although it is not possible to predict the exact number of people potentially exposed to unacceptable levels of aldicarb in their drinking water, EPA can identify those areas which are most vulnerable to leaching by aldicarb. It is in these areas that EPA believes major management efforts are needed if the registrations of aldicarb are to be continued.

Aldicarb is an important agricultural pesticide used on a number of crops including citrus, potatoes, cotton, and peanuts. Without the availability of aldicarb, growers could experience increased production costs to control pests. Consumers could also expect to pay higher prices for some food products. EPA has concluded that on a national basis, the risks posed by aldicarb contamination of ground water outweight the benefit of use.

EPA believes that it is possible to reduce the risks significantly by imposing certain regulatory restrictions short of cancellation of all use. EPA believes that such restrictions would reduce exposure to a point where the remaining benefits would outweigh the risks of use.

C. EPA's Proposals

EPA's proposed approach for aldicarb implements the recently proposed long-term strategy addressing the concern of pesticides in ground water. This aldicarb proposal uses graduated measures in order to prevent unacceptable ground water contamination. The extent of preventive measures required in a specific area

would depend on the area's vulnerability to such contamination. The most stringent prevention measures would be required in those areas where there is the greatest potential for unacceptable levels of ground water contamination by aldicarb.

1. National Measures

EPA is proposing uniform, national actions which would prohibit the use of aldicarb within 300 feet from any drinking water well and classify aldicarb as a restricted use pesticide due to ground water concerns. These measures would serve as baseline requirements in all areas where aldicarb is used. In addition to these baseline efforts, monitoring would be required in representative areas which have been evaluated in EPA's ground water assessment as having a medium potential to leach. The data resulting from this monitoring will be used to further characterize the medium areas and to determine whether additional regulatory action beyond the baseline requirements will be needed in these areas.

2. Area-specific Measures

The most stringent measures EPA is proposing are in those areas identified as having the greatest potential for aldicarb to reach ground water. States would play an active role in protecting ground water resources in these areas by implementing State Pesticide Ground Water Management Plans. EPA believes that the States are in the best position to regulate the use of aldicarb to prevent/reduce unacceptable ground water contamination in the areas of greatest concern. Acceptable State Management Plans will serve as the basis for the continued registration of aldicarb within these highly vulnerable areas.

EPA is proposing two options for identifying the areas which would need a Management Plan. One option is based on a method which evaluated 11 hydrogeologically similar areas called Heath Regions. The other option is based on a county evaluation method. If the option based on the Heath Region assessment were used, the following states would be required to submit a plan: Alabama, Florida, Georgia, Maine, Michigan, Minnesota, New York, North Dakota, Pennsylvania, and Wisconsin. If the option based on the county assessment were used, criteria would be applied to identify which counties required a plan. To date, EPA has applied the county assessment method to only 4 states with the following results: 3 out of 58 counties in California, 26 out of 67 counties in Florida, 8 out of 72 counties in Wisconsin and no counties in North Carolina would need to develop and implement a Management Plan. EPA anticipates that 15 to 24 states would be required to submit plans for one or more counties if the county option were chosen.

D. Issues for Public Comment

The regulatory approach proposed by EPA represents a new way to manage pesticides. The problems posed and issues raised by pesticides which leach are different from the pesticide problems and issues traditionally dealt with by EPA. Although EPA believes the approach it has proposed is a viable means of dealing with the concerns of leaching, it is receptive to any suggestions on how it can be improved or refined. Accordingly, public comment is being solicited on a number of questions and issues pertaining to the actions proposed. Specifically, EPA is soliciting comment on the following:

(1) Which option for identifying those areas which need Management Plans is favored, the Heath Region or county approach?

(2) What should be the components of a Management Plan?

(3) Should a localized risk/benefit analysis be performed and, if so, how should it be performed and who should do it?

(4) Who should bear the responsibility for cleaning up ground water if contamination occurs?

(5) Should EPA attempt to establish restrictions based on the hydrogeology of a particular site (e.g., soil type or pH of the soil) to prevent contamination of ground water?

(6) Should EPA impose Management Plans through the rulemaking process or the Special Review process?

II. Background and Regulatory History

Aldicarb is a soil incorporated carbamate pesticide absorbed by plant roots. It provides systemic control of insects, mites and nematodes. EPA estimates that approximately 5.2 to 5.7 million pounds active ingredient (a.i.) are used annually. Rhone-Poulenc AG Company is the sole registrant of aldicarb. Since its first registration in 1970 for use on cotton, aldicarb is now registered for use on: Citrus, dry beans, grain sorghum, ornamentals, pecans, peanuts, potatoes, seed alfalfa, soybeans, sugar beets, sugarcane, sweet potatoes and tobacco.

Aldicarb is an acutely toxic pesticide, causing reversible cholinesterase inhibition. Laboratory data both on animals and humans, as well as human incident data, indicate that extremely low levels of aldicarb exposure can produce toxic effects in humans.

On July 11, 1984, EPA issued a Notice of Rebuttable Presumption Against Registration (RPAR, now called Special Review) and Continued Registration of Pesticide Products Containing Aldicarb (49 FR 28320). That action was based on a finding that registrations of pesticide products containing aldicarb met or exceeded risk criteria in 40 CFR 162.11(a)(6)(i) which provide that a Special Review shall arise if it appears that, "based on toxicological data, epidemiological studies, use history, accident data, monitoring data, or such other evidence as is available to the Administrator, the pesticide may pose a substantial question of safety to man or the environment * * *" The basis for the initiation of the aldicarb Special Review was the potential for unreasonable adverse effects, specifically acute toxic effects to humans from dietary exposure to drinking water from ground water wells contaminated with aldicarb. Subsequently, the potential risks due to dietary exposure to aldicarb-treated crops was also examined.

As a part of the Special Review process, EPA evaluates the risks and benefits associated with the use of a pesticide and then proposes any regulatory actions necessary to assure that use of that pesticide results in no unreasonable adverse effects.

Potential risks are associated with consumption of raw agricultural commodities and drinking water contaminated with residues of aldicarb. Aldicarb has been detected in drinking water wells in 16 states at levels ranging from under 10 parts per billion (ppb) to over 500 ppb and, because aldicarb residues can persist in ground water for several years, ground water contamination by aldicarb may be a widespread, long-term problem.

EPA's position and regulatory rationale are set forth in Unit III of this notice. The basis for EPA's action is explained more fully in the Aldicarb Technical Support Document. The Technical Support Document also contains references, background information, and other information pertinent to the registration of pesticide products containing aldicarb. The Aldicarb Technical Support Document and this Notice will be sent to all registrants and applicants for registration of pesticide products containing aldicarb.

If EPA concludes that the risks of a pesticide outweigh its benefits, the administrative mechanism under FIFRA which EPA uses to require registrants to either adopt risk reduction measures or face cancellation is the Notice of Intent

to Cancel. A draft Notice of Intent to Cancel aldicarb products which imposes EPA's risk reduction measures will be prepared following the receipt and analysis of comments submitted in response to this **Federal Register** Notice. The draft Notice of Intent to Cancel will be forwarded to the Scientific Advisory Panel, the Secretary of Agriculture, and to the registrant of pesticide products containing aldicarb to permit their review. A copy of the draft Notice of Intent to Cancel will also be placed in the public docket. The draft Notice will contain provisions regarding procedures for requesting a cancellation or denial hearing after issuance of a final Notice of Intent to Cancel, assuming that registrants do not commit to implement the risk reduction measures proposed here.

Comments on this **Federal Register** Notice and the Technical Support Document must be filed within 90 days of the publication of this Notice.

III. Legal Background

A. The Statute

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136 et seq.). Before a product can be registered unconditionally, it must be shown that it can be used without "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)), that is, without causing "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide" (FIFRA section 2(bb)). The burden of proving that a pesticide meets this standard for registration is at all times on the proponents of registration and continues as long as the registration remains in effect. If at any time EPA determines that a pesticide no longer meets this standard for registration, then the Administrator may cancel the registration under FIFRA section 6.

B. The Special Review Process

The term "Special Review" is the name being used for the process previously called the Rebuttable Presumption Against Registration (RPAR) process (40 CFR 162.11). Modifications to the process are described in the final Special Review regulations (40 CFR Part 154). These regulations, promulgated on November 19, 1985 (50 FR 49003), became effective on May 14, 1986.

The Special Review process provides a mechanism to:

(1) Gather information about the risks and benefits of pesticides which appear to pose unreasonable risks to man and the environment.

(2) Publicly state EPA's position.

(3) Invite pesticide registrants, other Federal and state agencies, user groups, environmental groups, and other interested persons to comment on EPA's review of a pesticide.

(4) Establish a public docket.

(5) Review and respond to all significant comments submitted in a timely manner.

(6) Make a final regulatory decision based on a balancing of risks and benefits associated with a pesticide's use.

Issuance of this Notice means that EPA has assessed the potential adverse effects and benefits associated with the use of pesticide products containing aldicarb and that EPA has preliminarily determined that, unless the terms and conditions of registration are modified as proposed in this Notice, the risks from the use of pesticide products containing aldicarb outweigh the benefits of such use.

IV. Summary of Risk and Benefit Determination and Proposed Regulatory Action

A. Determinations on Toxicity

Aldicarb has a high acute toxicity to humans via the oral, inhalation and dermal routes of exposure and has been assigned to toxicity category I, based on all three routes of exposure. It is a potent cholinesterase inhibitor with an acute LD_{50} in rats of 0.9 mg/kg. In a study using human test subjects, the Lowest Observed Effect Level (LOEL) for clinical signs (e.g., gastrointestinal disturbances, unconsciousness, blurred vision, excessive salivation, seizures, and disorientation) is 0.1 mg/kg and the No Observed Effect Level (NOEL) for clinical signs is 0.05 mg/kg. There was no NOEL for cholinesterase inhibition in the registrant's human study; the lowest doses of aldicarb tested, 0.025 mg/kg., caused a 35 to 54 percent decrease in cholinesterase levels. The National Academy of Sciences used these data to extrapolate a NOEL of 0.01 mg/kg for cholinesterase inhibition.

No known reports of cholinesterase inhibition and/or clinical signs have been reported as a result of legal application of aldicarb. A number of reports of accidental exposures following misuse of aldicarb indicate that cholinergic signs, even severe cholinergic signs, may occur at doses considerably below 0.1 mg/kg, the LOEL for clinical signs in the human study described above. These effects are reported to occur at doses as low as 0.0026 mg/kg. These data are anecdotal, however, and it is difficult to precisely quantify exposures for these accident data. The data may indicate a broad range of sensitivity to oldicarb's acute effects. In light of all information, EPA believes that the NOELs for cholinesterase inhibition and clinical signs associated with such inhibition are close to 0.01 mg/kg and at 0.001 mg/kg it is unlikely that individuals will show clinical signs or have depressed cholinesterase activity.

The chronic toxicity data base for aldicarb is complete. Aldicarb is negative for delayed neurotoxicity, oncogenicity and reproductive effects. It is also negative for teratogenicity. The one effect of concern is acute cholinesterase inhibition. There is a 10 ppb Health Advisory level for aldicarb residues that contaminate drinking water, based on the cholinesterase inhibition seen during chronic exposure. The Health Advisory is set by EPA's Office of Drinking Water, is based on consideration of risks, and reflects that Office's judgment that exposures to residues of aldicarb in drinking water above the Health Advisory would not protect human health adequately.

B. Ground Water Vulnerability Analyses

The objective of the ground water vulnerability analyses is to determine those areas of the country where there is a high, medium, or low potential for ground water to be contaminated from the use of aldicarb. Due to the length and extensive technical scope of these analyses, they are summarized and only a portion of the scientific details and documentation have been included in this Notice. The Aldicarb Technical Support Document contains a more detailed discussion of the vulnerability assessments. The supporting references for the assessments can be viewed in the Public Docket, located in room 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia.

1. Environmental Fate

Aldicarb is mobile in most types of soil in which it is applied. Incidents of ground water contaminated by aldicarb, however, have been primarily associated with sandy soils. Aldicarb binds poorly to sandy soils (sands, loamy sands, and sandy loams, primarily) and any water input to sandy soil (i.e., rain and irrigation) tends to recharge rapidly through the profile, carrying aldicarb with it.

Aldicarb oxidizes to aldicarb sulfoxide and a portion of the aldicarb

sulfoxide oxidizes to aldicarb sulfone. Aldicarb sulfoxide and sulfone residues are found approximately in a one-to-one ratio. The oral LD^{50} of aldicarb sulfoxide is 0.9 mg/kg, the same as for aldicarb, while aldicarb sulfone is much less toxic, with an LD^{50} of 24 mg/kg.

Soil half-lives for degradation of aldicarb and its metabolities to nontoxic residues in the root zone vary from a week to greater than 2 months, but are typically between 1 and 2 months. The primary mode of degradation in the root zone is oxidative metabolism by microorganisms, although hydrolysis may also occur. Factors which result in more rapid rates of aldicarb degradation in the root zone include warm soil temperatures, high soil moisture content, and high organic matter content.

The primary mode of degradation below the root zone is chemical hydrolysis. Typically, the rate of degradation by hydrolysis is slower than microbial degradation. Measured and extrapolated half-lives vary from several weeks to greater than 20 years under ambient conditions, depending on pH and temperature.

2. Ground Water Assessment

EPA does not believe that methods presently exist to perform accurate quantitative assessments of the amount of a pesticide which may appear in ground water. Thus, EPA's review provides a qualitative, rather than quantitiative, assessment of the vulnerability of ground water to aldicarb contamination.

In order to determine the relative potential for aldicarb to leach and contaminate ground water in different parts of the United States, EPA used two geographic units of evaluation: One involving Health Regions (11 distinct hydrogeologic ground water regions of the United States, developed by the U.S. Geologic Survey) an done involving counties. A brief discussion of the two approaches follows.

a. Ground Water Assessment by Health Region.

This assessment evaluates the potential for aldicarb to reach ground water as a result of its use on the major aldicarb crops—citrus, potatoes, cotton, soybeans, and peanuts. Those crops account for over 90 percent of aldicarb use. The methodology developed was intended to identify the most vulnerable situations.

Eleven of the Health Regions were deemed appropriate for examination based on extent of crop acreage of the five chosen crops in the regions. This structuring resulted in 32 crop/region combinations which were evaluated for their potential for aldicarb contamination of ground water aldicarb usage.

Three major parameters were employed to evaluate the ground water vulnerability of these regions: hydrogeologic characteristics of counties, ground water monitoring data, and crop use practices. Hydrogeologic characteristics were evaluated by a close evaluation of 138 counties where aldicarb is used, and use of a hydrogeologic model called DRASTIC. DRASTIC is a screening system which estimates ground water vulnerability using seven characteristics: Depth to ground water; recharge; aquifer media; soil media, topography; impact of the vadose zone and hydraulic conductivity of the aquifer. Crop use practices include cultivation methods, rate of application, and temperature for each of the five major crops grown in a particular region.

Each of the parameters was given a qualitative rating of high, medium, or low each crop/region combination. A weight-of-evidence approach was then used to evaluate each crop/region combination as high, medium, or low potential to contaminate ground water.

The overall ground water vulnerability ratings, based on these independent parameters, show a high vulnerability for areas growing potatoes in the Northeast and Midwest and citrus and peanuts in the Southeast. In the first three of these crop/regions, monitoring data have confirmed the vulnerability rating. In the case of areas growing peanuts in the Southeast, the county, DRASTIC, and site-specific analyses indicated a high vulnerability, although monitoring data comparable to that performed in other regions were not available.

Cotton growing areas in the West Coast and Southwest show a low vulnerability due primarily to the low application rates and the deep ground water associated with these regions.

The remaining crop/region combinations were given medium vulnerability ratings based on the parameters. A portion of these medium crop/region could be placed in the high or the low vulnerability category if additional monitoring data were available.

EPA believes that this weight-of-evidence approach and corresponding qualitative ground water vulnerability ratings provide a rational basis for depicting potential ground water contamination from aldicarb usage.

b. Ground Water Assessment by County

Another approach developed by EPA to predict the likelihood of ground water contamination was to perform an assessment at the county level using basically the same parameters as the Health Region approach. However, instead of crop practices, the county assessment approach employed use rates and/or total amount of aldicarb applied in a county. The advantage to the county approach is that it focuses on a smaller geographic unit than the Health Region approach.

This approach can be used to predict the likelihood of ground water contamination by aldicarb within a county. The parameters would be qualitatively rated and each of the counties would be classified as having a high, medium or low potenital for ground water contamination. EPA has performed the county ground water assessment for all counties in four selected states (California, Florida, North Carolina, and Wisconsin). In the example of the 4 state analysis, California has 3 out of 58 counties, Florida has 26 out of 67 counties, and Wiconsin has 8 out of 72 counties rated as high. North Carolina did not have any counties which were ranked high. However, the vulnerability to ground water contamination was sufficiently high in all other counties in each of these four states to be classified as medium in vulnerability.

As in the Health Region assessment, EPA believes that the weight-of-evidence approach and corresponding qualitative leaching potential ratings provide a rational basis for depicting ground water vulnerability to aldicarb contamination.

C. Risk Conclusions

1. Risks From Treated Commodities.

EPA has estimated dietary exposure to aldicarb, resulting from a single exposure, from consuming treated food commodities. EPA used data in support of tolerances submitted by the registrant and FDA market basket survey data to estimated exposure. Two commodities, potatoes and citrus, were identified as causing potential concern regarding risks to consumers. However, EPA has encouraged pesticide registrants to conduct monitoring studies to give an empirical representation of the level of pesticide residues to which the public is exposed. The registrant has recently submitted the results of a National Food Survey which monitored for residues of aldicarb in the market place. These data are currently under review and will be used, along with the tolerance data and the FDA market basket survey data, in the final dietary risk assessment.

2. Risks From Contaminated Drinking Water

EPA has estimated the percent of the population consuming various quantities of drinking water in their diet. EPA has also calculated a dose of aldicarb and provided a Margin of Safety estimate for these populations assuming various levels of contamination. The focus of the analysis was on the population of greatest risk, infants, because they consume most of their diet as formula and fruit juice which are both frequently prepared using tap water. EPA calculated that when drinking water containing aldicarb at 10 ppb, as many as 13 percent of consuming infants could be exposed to a dose of 0.001 mg/kg or greater of aldicarb. Clearly not all ground water in the nation contains aldicarb, nor where contamination is found will it always be above 10 ppb; see discussion in Unit IV.E. The corresponding Margin of Safety for cholinesterase inhibition would then be 10 or less, based on the NOEL estimated by the National Academy of Sciences.

It is difficult for EPA to perform a quantitative risk analysis because of the limited scientific understanding of ground water contamination. Traditionally, quantitative risk analyses have been conducted to assess the impact of various regulatory mechanisms designed to reduce dietary exposure from consumption of treated crops and/or applicator exposure. Data are available or can be generated which can provide fairly accurate estimates of the levels of likely dietary or applicator exposure. This is not the case for assessing exposures for pesticide contamination of ground water. While available data allow EPA to predict those conditions for which there exists the greatest potential for aldicarb to reach the ground water, EPA has a limited ability to estimate levels and length of exposure or the size of the exposed population. One of the key problems is EPA's inability to make general statements, on a national or local basis, about the proximity of drinking water wells to fields where aldicarb is used. Given the low level at which there is a risk from drinking water contaminated with aldicarb and the numerous areas in which aldicarb has already been detected, EPA is concerned in all instances where leaching appears likely to occur.

D. Determination on Benefits

After a thorough review of comments received in response to the Position Document 1 and subsequent attempts to obtain specific data, EPA determined that data sufficiently detailed to prepare a highly quantitative analysis of aldicarb benefits on a site/pest basis are limited. Data on the minor use sites were generally incomplete or unavailable. As a result, the analysis presented in the Aldicarb Technical Support Document often rely on the judgment and estimates provided by experts knowledgeable about various cropping practices and aldicarb use. Field tests comparing efficacy and performance of aldicarb and alternatives were unavailable for many site and pest combinations. Registrant and user data for comparative performance are solicited for all use sites.

If aldicarb registrations are cancelled, producer/grower control costs could increase by an estimated $54 to $85 million annually. Significant impacts are expected for citrus ($54 million) and peanuts ($17 to $33 million). Significant user losses and consumer expenditure impacts are expected as a result of lower citrus production. Moderate impacts at the national level are expected for cotton ($20 to $29 million) and potatoes ($11 to $15 million). Total producer and consumer impacts are estimated to be $135 million.

In addition to these tangible benefits, a number of existing benefits are difficult to quantify. Aldicarb simultaneously controls nematodes, mites and insects, especially if applied at the higher nematicidal application rates. Many alternatives cannot provide simultaneous control of these three pests without being used in combination with other pesticides. The systemic action of aldicarb provides residual pesticide effects. Many alternatives, by contrast, are applied as foliar sprays and provide a shorter duration of pest control. Alternatives must be applied two, three, or more times to provide equivalent pest control. Aldicarb is applied as a soil incorporated granule, while most of the probable alternatives are applied as sprays. Alternatives are, therefore, more subject to off-target drift and attendant mixer/loader/applicator exposure. In summary, no single alternative will completely replace aldicarb, although combinations and multiple treatments by these alternatives can provide effective control, albeit at higher costs.

Many of the alternatives have an insufficient toxicological data base. These data will be, or are currently being produced in response to EPA's reregistration process. Aldicarb is more acutely toxic to humans than any of the alternatives; however, the acute toxicity of some alternatives differs by less than one order of magnitude from aldicarb. Aldicarb has demonstrated a potential to leach, posing additional concern. Some of the alternatives to aldicarb have been found to be contaminants in ground water. On the other hand, other alternatives have been identified as oncogens, mutagens, or teratogens, while aldicarb has been found to be negative in these three categories.

E. Risk/Benefit Analysis

This Unit identifies and analyzes the most appropriate regulatory options for use of aldicarb. To accomplish this, the risks of use are compared with the benefits of use.

EPA is deferring a crop-based dietary risk assessment of aldicarb in order to complete its review of the data from the registrant's food survey. The final data have been submitted and are currently being evaluated. After the data are reviewed, EPA will conduct a risk/benefit analysis based on risks from consumption of contaminated food crops.

As previously explained, people are at risk from consuming water contaminated with aldicarb residues. Although it is not possible at this time to generate reliable quantitative estimates of either the levels of exposure to contaminated ground water or the number of people exposed to such contamination, some information exists which enables EPA to put the risks associated with ground water contamination into perspective. The extent of aldicarb contamination of ground water is significant. Thousands of wells have been contaminated with detectable levels of aldicarb. EPA evaluated studies which comprise over 35,000 samples of ground water from some vulnerable areas. Nearly one-third of all samples in these studies evaluated were positive, and over one-half of the positive samples exceeded the Health Advisory.

Many areas of the country where aldicarb is used are vulnerable to contamination and not all of these areas have been sampled. Therefore, it is reasonable to assume that there are other wells which have been contaminated by aldicarb but which have not yet been identified.

Using either the Heath Region or county approach assessing ground water vulnerability, EPA can target areas where there is the greatest possibility of aldicarb leaching to ground water.

Complicating the risk/benefit analysis in this case is the difficulty of placing a value on ground water. EPA believes that ground water is a valuable resource and that its protection from unacceptable contamination is

extremely important. Once contaminated, clean-up of an aquifer is exceptionally expensive or technically difficult, especially if the contamination is at a low level and widespread. If an alternate water source is to be provided, it can be both costly and inconvenient.

Available information indicates that the eventual cost of preventing exposure to drinking water contaminated with unacceptable levels of aldicarb could be quite sizable. Ground water contamination in Suffolk County, New York, serves as an example of how significant these costs can be. Since 1980, granular activated carbon treatment units have been installed in 3104 households where the water supply had been contaminated by aldicarb above 7 ppb. (The New York State Health Department established 7 ppb as the allowable guideline level for aldicarb residues in drinking water.) The cost of each filter is approximately $600 and the costs of installation are about $100. On the average, each filter is effective for 1 year after which time it must be replaced. The costs for a replacement filter and for installing it are about $150. The total costs for filters and the initial installation for Suffolk County is approximately $2.2 million with annual replacement costs of $465,600.

EPA believes that the total cost of cleaning up contaminated wells on a national basis could approach or even exceed the total benefits of aldicarb which have been estimated up to $135 million a year. Obviously, clean-up costs are not the only measure of risk, since some exposure would occur before filters are installed for a water supply. In light of all potential risks, therefore, EPA concludes that the risks posed by consuming water contaminated by aldicarb above the Health Advisory outweigh the benefits of use.

EPA has analyzed the risks of aldicarb resulting from ground water contamination, as well as the associated benefits, and concludes that use of aldicarb generally causes unreasonable adverse effects on the environment. Given the widespread incidence of contamination and the extensive presence of aldicarb in vulnerable areas, it could be appropriate to cancel the use of aldicarb nationally. There are, however, regions with low ground water contamination potential due to hydrogeologic formations or certain crop practices. Prohibition of aldicarb use in these areas may not be warranted because the risks would not outweigh the benefits of continued use. Similarly, minimal risk reduction measures in medium vulnerability areas may be sufficient for benefits to outweigh risks. EPA believes that the greatest risks are associated with aldicarb use in areas where the ground water is highly vulnerable to contamination. By prohibiting or actively managing the use of aldicarb in those vulnerable areas, EPA concludes that the risks of aldicarb use would be significantly reduced to a level where they would no longer outweigh the remaining benefits. EPA has no reason to believe that the benefits of aldicarb are significantly greater in highly vulnerable areas than in less vulnerable areas. Thus, while regulatory actions to reduce the risk in vulnerable areas may have some effect on benefits, the overall effect of such actions should be to improve the balance of risks and benefits. EPA believes that the combination of measures recommended in this Notice would allow the continued use of aldicarb without unreasonable adverse effects on the environment.

F. Regulatory options

With the information available, EPA has developed three options it believes could be used to mitigate the contamination of ground water by aldicarb. These options were developed with the understanding that aldicarb use in a significant number of areas would result in ground water contamination at levels that would cause unreasonable adverse effects on the environment and that there are measures which are appropriate and could be implemented to prevent such contamination.

On February 26, 1988, EPA issued a proposed strategic plan for addressing ground water contamination by agricultural chemicals (*Agricultural Chemicals in Ground Water—Proposed Pesticide Strategy*, available for Environmental Protection Agency, Public Information Center (PM–211B), 401 M St. SW., Washington, DC 20460.) Options 2 and 3 were developed using the approaches discussed in the proposed strategy.

1. Option 1—Risk Reduction Measures/User Determines Applicability

This option reflects a registrant submitted application for amended registration which includes an extensive set of risk reduction measures. These risk reduction measures, which are detailed in the Technical Support Document, include drinking water well setbacks of 50 or 100 feet in various states (except where more stringent state requirements apply); limitations on use in certain soil types; modifications in application rate, frequency, and/or timing; monitoring of drinking water wells; and 6-month crop rotation restrictions. These measures would be targeted to the users and the costs of monitoring ground water contamination and corrective actions would be borne by the registrant. Preventive measures could be tailored to specific conditions of the application site in order to prevent contamination of drinking water wells in high or medium vulnerability areas.

If this option were adopted, it would include a comprehensive monitoring program which is designed to test a statistically significant number of sites where aldicarb is being used.

Different prevention measures would apply in different areas depending on the specific climatic and soil conditions associated with the application site. The risk reduction associated with this option may be considerable. Not only is there a substantial reduction in the likelihood that ground water will be contaminated, but there is also a provision for detecting any contamination which does occur.

The costs of this option could be considerable. The risk reduction measures themselves will result in increased costs in the use of aldicarb as well as a prohibition on its use on certain farms where it is now used or at certain times when it is now used without restrictions. There are additional costs associated with monitoring and implementing corrective action plans.

Additionally, the restrictions are very technical, requiring knowledge of such factors as soil types and temperature, and depth to ground water. EPA believes it will be difficult in some instances for growers to obtain this information and for states to determine whether the use of aldicarb is appropriate. However, EPA is prepared to accept the registrant's proposal to reduce the rate and frequency of application and restricting the period of time that aldicarb may be applied since these provisions are straightforward to interpret and, thus, generally easier to enforce.

Since ground water can be a potential drinking water source, simply protecting existing drinking water wells is insufficient because aldicarb could still reach the ground water. These modifications alone are not considered to be adequate to mitigate the potential for contamination of ground water above the Health Advisory.

2. Option 2—Labeling/Monitoring/State Management Plans Determined by Heath Region.

EPA has developed a second option which provides states the opportunity to

play an active role in protecting ground water. This option would better define those areas where the possibility of ground water contamination is the greatest and includes labeling modifications, monitoring of ground water, and establishment of State Pesticide Ground Water Management Plans [Management Plans] in certain states. In identifying which states would need to develop such plans under this option, EPA used the ground water assessment by Heath Region as described earlier. The components of this option are described in Units III.F.2.a. through 2.c.

a. *Labeling component.* The previous option considered labeling as the sole risk reduction measure. Option 2 considers labeling as one of several risk reduction measures, with increasingly stringent measures being used in increasingly vulnerable areas. Under this option, labeling would be a minimum requirement applicable to any use of aldicarb in any area of the country, regardless of whether the state or county in which it is used has a Management Plan. The label would prohibit application or mixing/loading operations of aldicarb within 300 feet of any drinking water well. States could set more stringent well setback requirements (including more stringent ones for public wells vs. private wells) if they so choose. EPA believes that this measure will serve to reduce contamination of drinking water because it reduces the likelihood that aldicarb will directly contaminate a drinking water supply. It is difficult to estimate the costs incurred from not using aldicarb in these areas since EPA has no basis to estimate the number of wells in areas treated with aldicarb. Some reduction in use is anticipated, but the impacts are not expected to be significant.

The label would also designate aldicarb as a restricted use pesticide due to ground water concerns. Aldicarb is already classified as a restricted use pesticide due to its acute toxicity. The ground water restriction would serve to heighten a certified applicator's awareness of the concerns regarding the possibility of ground water contamination and target aldicarb users for training using the newly-developed ground water educational module (soon to be available to the states). It is believed that this requirement would not significantly affect the costs of applying aldicarb.

EPA has considered additional site conditional measures that could be added to the label to deal with situations where leaching has been shown to occur. For example, EPA has information which demonstrates that leaching occurs when aldicarb is used on soils classified by the USDA Soil Conservation Service as "sand" or "sandy loam" and when the field overlies shallow ground water suitable for drinking, where shallow is defined as an average water table depth of less than 30 feet. A site specific measure prohibiting use of aldicarb in areas where these two conditions are met could be instituted. However, as discussed under Option 1, EPA has concerns whether this information is available to growers and whether these prohibitions are enforceable. Thus, EPA is not specifically proposing site conditional measures at this time but requests comment on their feasibility.

b. *Monitoring component.* The registrant would be required, under FIFRA section 3(c)(2)(B), to design and implement a monitoring program in representative areas rated as medium vulnerability to leaching. EPA would defer a proposal regarding the need for additional regulatory measures (e.g., requirement for implementing Management Plans) to manage the use of aldicarb in medium vulnerability areas until these additional monitoring data are submitted and assessed. This deferral is due to information available which suggests that medium areas are less susceptible to leaching than high vulnerability areas. EPA sees some potential for leaching in medium vulnerability areas in large part because of the variability of hydrogeological conditions. However, because of the limits on the understanding of this variability and how specific factors relate to leaching, EPA does not have as much basis for concern as in high vulnerability areas. Short of extensive mapping and advancement in scientific knowledge, EPA believes that monitoring would be the best way to understand the potential for aldicarb to leach in these medium vulnerability areas. In the interim period, the use of aldicarb in the medium vulnerability areas would be regulated through the labeling restrictions/prohibitions described in Unit III.F.2.

The costs associated with generating the monitoring data will not be considered part of the risk/benefit analysis as it is part of the expense involved in supporting the continued registration of this pesticide. The specific costs associated with a state implementing a Management Plan in medium vulnerability areas is not considered at this time since imposition of additional Management Plan requirements would necessitate a subsequent proposal.

c. *State Pesticide Ground Water Management Plan component.* EPA believes Management Plans provide the greatest site-specific assurances of proper use without overly protecting areas where contamination is unlikely. Management Plans put the primary responsibility on the state for regulating these specific areas and allows for evaluation of site-specific prevention measures based on the use, value and vulnerability of the ground water.

There are a number of approaches EPA could use in providing guidance to the states in developing a Management Plan. These various approaches range from establishing a performance standard based on a goal of preventing unacceptable contamination (i.e., the Maximum Contaminant Level or Health Advisory level) and allowing the states to develop a Management Plan to meet that standard, to providing a specific Management Plan which all states must adopt. EPA favors a middle path of providing a framework for the plan but providing flexibility to recognize that different states may use different approaches in accomplishing the same goal of protecting ground water from unacceptable contamination. However, each state would need to meet the performance standard through implementation of its Management Plan. EPA is seeking extensive comment on the design of a Management Plan and will be sponsoring a series of regional workshops beginning in the summer of 1988 to further explore and develop the concept. Anyone who wishes to comment specifically on the Management Plan presented by EPA should request a copy of the Aldicarb Technical Support Document from the contact person identified earlier in this Notice.

As envisioned by EPA, a Management Plan would be a comprehensive description of a state's approach for managing the use of a pesticide(s) for the purpose of protecting the ground water resource with specific attention given to preventing unacceptable contamination of current and potential drinking water supplies. The plan should:

(1) Describe the state's overall philosophy and approach to protecting its ground water from unacceptable pesticide contamination.

(2) List the specific measures to be employed (may include for example, one or more of the following: Cancellation of use or moratoriums; reduction in the rate of use; application method and timing limitations; more stringent well setback

restrictions; wellhead protection of public drinking water; mixing and loading requirements; changes in agronomic practices; permit or advance notice programs; and user education training.

(3) Identify the state's enforcement authorities and capabilities which can be used to assure compliance with the provisions of the plan.

(4) Identify the location of ground water that is currently and could potentially be a source of drinking water in the future or that is of ecological importance.

(5) Contain a monitoring scheme designed to ensure that the efforts to avoid contamination through proper use are effective or to identify contamination resulting from misuse/accident.

(6) Establish contingency plans to deal with contaminated ground water.

(7) In cases where contamination is at an unacceptable level, describe the mechanisms to be used to reduce contamination, including the source of funding.

(8) Describe how the public is kept informed and can become involved.

EPA realizes that there could be much variation among state plans to account not only for differing state conditions but also varying state approaches. EPA would be flexible in its review of the various state plans, recognizing that different approaches can be used to obtain the same goal (i.e., preventing contamination or reducing the likelihood of a pesticide in ground water reaching an EPA-designated level). States may elect to work collectively in developing various components of a plan; however, each state would be responsible for the development and implementation of its own plan.

Management Plans would be needed for those areas designated as having the greatest potential for aldicarb to reach ground water. As previously discussed, EPA used two methods of assessing the potential for ground water contamination. This option uses the Heath Region as the geographical unit for identifying states that would need a Management Plan.

Although EPA believes it would be advantageous for all states to implement a Management Plan, it realizes that such a requirement would be onerous for both states and EPA, at least until some states had experience in developing and implementing the plans.

To identify the states which most need to develop a Management Plan, EPA first identified the areas where there is the greatest possibility of ground water contamination resulting from the use of aldicarb. Those areas where potatoes are grown in the Northeast and Midwest and where citrus and peanuts are grown in the Southeast, have been identified using the Heath Region approach as having the greatest possibility of ground water contamination resulting from aldicarb use.

EPA then looked at the states which account for a large percent of the areas where aldicarb could be expected to be used the most and that contained a significant percent of the acreage of the crop (of the crop/Heath Region combination rated as highly vulnerable) in the high vulnerability areas.

Since potatoes grown in the Northeast and Midwest were rated as having a high vulnerability, to determine which states had the greatest number of acres within these Heath Regions, county totals of potato acreage from the 1980 Agriculture Census were summed. In those instances where a state is divided by a Heath Region, only the potato acreage within the two Heath Regions of concern was considered. Then, those states with the greatest potato acreage within the two Heath Regions of concern were identified.

It was determined that seven states (Maine, Michigan, Minnesota, New York, North Dakota, Pennsylvania, and Wisconsin) account for 98 percent of the potato acreage in the Northeast and Midwest. Further, three states in the Southeast (Alabama, Florida, and Georgia) account for virtually 100 percent of the peanut and citrus acreage within that region. Therefore, there are 10 states identified that would need to submit a Management Plan under this option (Alabama, Florida, Georgia, Maine, Michigan, Minnesota, New York, North Dakota, Pennsylvania, and Wisconsin). Other states in these regions with lower acreage would be covered by national labeling requirements and by monitoring requirements.

Additionally, as a condition for registration, the registrant would have to agree to monitor in high vulnerability areas where aldicarb is used and which are not subject to a Management Plan. Monitoring would be required in the states of Connecticut, Hawaii, Idaho, Illinois, Indiana, Kansas, Massachusetts, Missouri, Montana, Nebraska, New Hampshire, Ohio, Rhode Island, South Carolina, South Dakota, and Vermont, since some or all portions of these states are considered highly vulnerable.

This monitoring effort would involve sampling in fields where aldicarb is used. The wells to be sampled could either be suitable existing wells or specially constructed monitoring wells. Monitoring would be performed over a specified period of time and the data would be evaluated in order to assess the effect of the imposed labeling restrictions in terms of eliminating or reducing ground water contamination.

EPA has evaluated the possible costs for developing and implementing Management Plans in the 10 states. Estimates of the possible costs were developed from available published data where possible. For some cost components (e.g., number of wells affected, severity of contamination, exposed population, duration of contamination), data were not available to estimate the potential costs of requiring these plans. Furthermore, environmental and geographic conditions vary widely among and between the states needing to submit Management Plans. Without knowing in advance the measures each state may wish to employ to manage the use of aldicarb, precise estimates could not be developed. Recognizing the data limitations, EPA believes that the cost estimates are sufficiently accurate to serve as input in assessing initial economic effects.

Through conversations with state agencies that currently have management programs, it is estimated that the development and set up costs of a Management Plan could range from about $150,000 to $700,000 per state for the 10 states needing to submit Management Plans. These costs include the expenses associated with the actual development or structuring of the Management Plan ($10,000 to $25,000), construction of compliance monitoring wells including easements and land costs ($44,000 to $488,000), and mapping ($100,000 to $200,000). Development and set-up costs are a one-time expense.

The Management Plans would also have annual costs associated with implementation. These costs are estimated to range from $275,000 to $434,000 on a per state basis. These costs would include the expenses of such activities as enforcement, and sampling and analysis for aldicarb contamination. These costs would occur on a yearly basis but may decline if fewer samples are analyzed in later years or if voluntary compliance reduces enforcement costs. In its Management Plan, a state will define those conditions under which the use of aldicarb may be allowed. These include, for example: Banning the use in certain areas or under certain conditions, specifying how much aldicarb may be used on a per acre basis, or how many times aldicarb may be applied per year. EPA expects that the Management Plan will result in reducing the probability of ground water

contamination by aldicarb above the Health Advisory in the areas covered by the Management Plan and thus reduce the risk to an acceptable level.

In determining whether it is worthwhile to implement a Management Plan or allow use of aldicarb to be banned, one must consider the long-term rather than the short-term costs. Even though it has been estimated that the first year costs for the development, set up, and implementation of Management Plans in the 10 states could be as high as $8.17 million, $4.7 million would be one-time costs. Additionally, if other pesticides which leach require similar regulation in the future, some of the costs would already have been borne from regulating aldicarb. For example, the costs to develop a Management Plan do not occur on a yearly basis. Once a Management Plan is in place, it would be fairly easy to apply it to another pesticide which leaches. Similarly, although construction of compliance monitoring wells is fairly expensive, this is also a one-time expense. These wells may be used to determine whether other pesticides being applied in the same field are reaching the ground water.

Finally, if it is determined that the Management Plan were successful in eliminating the leaching of aldicarb into ground water, requirements for sampling, one of the more expensive yearly costs associated with implementation of a Management Plan, may be greatly reduced or eliminated. In addition, the potential costs of remedial actions which can range from several hundred dollars to more than $2,000 per household (annualized for 5 years), would also be eliminated if ground water was successfully protected from contamination.

The estimated cost resulting from cancellation in the 10 states assuming that a Management Plan were not developed, could exceed $60 million.

3. Option 3—Labeling/Monitoring/State Management Plans Determined by County. This third option is identical to Option 2 in that it would have the same labeling and monitoring components. However, the states that would need to develop Management Plans would be identified using a county approach which identified counties where EPA believes aldicarb has the highest tendency to leaching. Under this approach, states would need to develop and implement a Management Plan for those counties classified as such.

The criteria used to identify which counties would need a Management Plan are very similar to those used to select states in Option 2. The major difference is the size of the geographic area being analyzed. The criteria are hydrogeologic vulnerability, use/usage of aldicarb, and availability of positive monitoring data.

In the 4 states that EPA selected as examples for this assessment, California has 3 out of 58 counties, Florida has 26 out of 67 counties, and Wisconsin has 8 out of 72 counties needing a Management Plan. North Carolina did not have any counties which were ranked high enough to need the establishment of a Management Plan. However, the vulnerability to ground water contamination was sufficiently high in all other counties in each of these four states to be classified as medium in vulnerability. The registrant will be required to undertake a monitoring study that will be representative of those moderately vulnerable areas.

EPA has not completed an assessment of all counties within the United States. If this option is adopted, EPA would apply these criteria to all counties to identify those which need a Management Plan. Because the total number of counties needing a Management Plan is not yet identified, the costs resulting from a cancellation action under the county approach, assuming none of the states submit Management Plans for their county(ies), cannot be estimated at this time. However, EPA believes this cost would lie in the range of the costs associated with the Health Region approach and those resulting from cancellation of all aldicarb uses (i.e., between $60 million and $104 to $135 million).

The major problem with Options 2 and 3 is that some states may not have the legal authority, technical skills, or resources to establish or implement an effective Management Plan. Both approaches provide states a strong incentive to submit an acceptable Management Plan since, without it, use in the entire state or certain counties would be prohibited. In contrast to the county approach, the Health Region approach may be more likely to have areas that are either overly protected or underprotected since the classification of vulnerability was based on large Health Regions. The county evaluation was based on a more specific geographic unit, the county.

G. Proposed Regulatory Decision

EPA is deferring a decision regarding the potential risks due to dietary exposure to aldicarb from consumption of treated food commodities until the final results from the registrant's National Food Survey are evaluated. At such time, EPA will consider whether further regulatory action will be necessary.

EPA believes that ground water is a natural resource which must be protected from unacceptable contamination by pesticides. Data available to EPA confirm that aldicarb has a great leaching potential and that contamination of ground water above the Health Advisory has occurred in many instances. EPA's ground water assessment methods, using the Health Region or county approach, have examined areas of the country where aldicarb is used and have identified areas which are highly vulnerable to contamination. EPA believes that contamination above the Health Advisory is likely to occur at sites throughout these areas.

There are risks to people consuming drinking water contaminated by aldicarb above the Health Advisory. While EPA cannot predict the level of exposure to contaminated drinking water or the number of people exposed to such contamination, it is known that many have been contaminated by aldicarb. Available information suggests that the costs of correcting such contamination would be considerable. EPA concludes that on a national basis, the risks posed from contamination outweigh the benefits of use. Consequently, regulatory action to prevent ground water contamination is necessary to prevent unreasonable adverse effects on the environment.

EPA believes that it is possible to reduce the risks significantly by imposing certain regulatory restrictions short of cancellation of all use. These restrictions would be a graduated response to an area's vulnerability in such a way that the most stringent measures would be required in areas where there is the highest likelihood of unacceptable ground water contamination. EPA believes that such restrictions would reduce exposure to a point where the remaining benefits would outweigh the risks of use.

EPA has evaluated three options to prevent the unacceptable contamination of the nation's ground water by aldicarb and believes that Management Plans afford the greatest assurance of protecting ground water from contamination without overprotecting areas where contamination is unlikely or can reasonably be prevented. EPA further believes that it is necessary to impose certain restrictions on the use of aldicarb as a basic level of protection nationwide in order to reduce the potential for ground water contamination. Additionally, EPA does not believe that there are adequate data available to predict the likelihood of the

contamination of ground water in medium vulnerability areas.

Options 2 and 3 both accomplish these goals. They classify aldicarb as a restricted use pesticide due to its ground water contamination potential, in addition to its acute toxicity. They also provide a 300-foot well set-back on aldicarb use and require monitoring in medium vulnerability areas and Management Plans in the areas where ground water contamination is not likely to occur. Option 2 uses the Health Region approach in identifying the need to Management Plans on a state basis and Option 3 uses the county approach in identifying the need to Management Plans on a county basis. Because of the legal mechanisms established under FIFRA for accomplishing these goals, the alternative to establishing Management Plans in those states or counties where a Management Plan is needed but not implemented is cancellation of aldicarb use in those areas. EPA is seeking public comment as to whether Option 2 (state approach) or Option 3 (county approach) is favored.

EPA proposes Options 2 and 3 to impose label restrictions and monitoring requirements, and to allow the use of aldicarb in certain states/counties which have approved Managment Plans and cancel the use of aldicarb in certain states/counties which choose not to implement Management Plans.

In comparing the two options proposed by EPA, three basic differences are evident. Under Option 2, the state would need to implement a Management Plan which addresses all counties within the state rather than only specified counties as under Option 3. However, EPA recognizes that in addressing each county in a statewide plan, the state may properly conclude that only certain counties need to implement risk reduction measures. Another difference is the number of states which would need to implement a Management Plan. EPA estimated that the number of states which would need to implement a Management Plan under the approach in Option 3 will be between 15 and 24 compared to the 10 states identified under Option 2.

Finally, under Option 3, states would need to implement a Management Plan in all counties with a high potential to leach. Under Option 2, there are a number of states containing areas rated as having a high potential to leach (but with low aldicarb use) which would not need to implement a Management Plan. In these states the registrant, as a condition of registration, would be required to monitor ground water in high vulnerability areas to assure that the national uniform measures are sufficient to prevent ground water contamination at levels that would cause unreasonable adverse effects on the environment.

EPA is considering two different procedures for implementing the provisions of Options 2 and 3. Under one procedure, EPA would implement the Management Plan approach using the cancellation procedures in FIFRA section 6. In general, after appropriate opportunities for public and state participation, EPA would seek to cancel the use of aldicarb in areas where a Management Plan was considered necessary to prevent unreasonable adverse effects on the environment but for which areas no adequate Management Plan had been developed. As the first step of this process, once EPA decided how it would select the areas for which Management Plans are needed, it would explain the selection procedure, identify the areas, and establish a deadline for states to submit a description of their plans. Following EPA review and an opportunity for states to improve any plans which EPA might consider inadequate, EPA would issue a Notice of Intent to Cancel, identifying those areas in which cancellation would occur. Registrants and other adversely affected persons would then have an opportunity to challenge EPA's determinations in an adjudicatory hearing under FIFRA section 6.

Because the cancellation process is so lengthy and consumes so many resources, EPA is considering an alternative process. The alternative process would rely on the authority in FIFRA section 3(d)(1)(C) to issue regulations classifying a pesticide for restricted use and imposing "other regulatory restrictions" on its use. Generally, EPA would issue a proposed and final rule under FIFRA section 3(d)(1)(C) which restricted the use of aldicarb in section areas (e.g., the areas identified using Options 2 or 3) to use in conformity with a Management Plan. The regulations would establish requirements for the content of Management Plans, procedures for comment and review of Management Plans by EPA, and procedures for implementation by the states.

EPA requests public comment on these alternative procedures for implementing the Management Plan approach. EPA is particularly interested in comments addressing the time required for full implementation under each alternative. In addition, if the rulemaking approach is chosen, EPA is interested in the procedures that should be established for review and approval of Management Plans. Finally, EPA would be interested in other proposals on the process that should be used to implement a Management Plan approach.

EPA is seeking comment on whether site conditional measures should be required for aldicarb labels. A specific measure has not been proposed. EPA believes that unacceptable ground water contamination is likely to occur in certain situations, e.g., when applied to a certain soil type when the depth-to-ground water is less than a specified number of feet. Consequently, a label restriction prohibiting use of aldicarb in such instances would be useful in preventing unacceptable ground water contamination. However, given that a specific measure has yet to be identified, EPA cannot comment on the level of risk protection afforded or the cost impacts resulting from implementing this measure.

EPA is also soliciting public comment on the labeling requirement that aldicarb not be applied any closer than 300 feet of a drinking water well. Comment is specifically being requested on whether a 300-foot setback is appropriate, whether it should be a greater or lesser length, and whether there should be a different prohibition for public versus private wells. EPA is also interested in the anticipated impacts resulting from the proposed well setback in terms of decreases expected to yields.

In addition, because the regulatory approach recommended by EPA differs significantly from previous decisions under FIFRA, EPA requests comment on the way in which it has explained and supported its position. In particular, EPA invites public comment on the most appropriate analytical framework for weighing risks and benefits for a pesticide which has the potential to contaminate ground water. Should a more quantitative risk assessment be performed and, if so, how should it be performed? What should be included in the assessment (e.g., number of people exposed, cost of monitoring, treatment or clean-up, lost land values, value of potential drinking water)?

At what level of resolution should the benefits analysis be conducted (e.g., national, state, county, or local)? In making risk/benefit decisions on the county level, EPA could consider information such as the following:

1. The importance of aldicarb to the county, including the relative size of the contribution aldicarb-treated crops make to the local economy and additional local employment which depends on these crops (e.g., processing plants).

2. The importance of ground water to the county, including the extent to which the community depends on ground water as a drinking water source, the number of people who rely on private wells for drinking water, the degree to which this dependence is likely to change, and the importance of ground water in terms of projected land use (e.g., possible residential, commercial, or industrial development).

3. Management costs associated with mitigating the effects of the use of aldicarb in communities, including monitoring, point-of-use controls, importation of water, and clean-up costs.

4. The importance of conditions on efficacy of alternatives to aldicarb, including unique or special climatological or agronomic factors (e.g., age of citrus trees, amount and timing of rainfall).

5. Aldicarb's effectiveness and use (i.e., application rate by crop and county and usage), especially for high value (e.g., ornamentals), continuous cultivation crops (e.g., bananas), and crops with rapidly changing usage (e.g., soybeans).

EPA is soliciting comments on the appropriateness of the above factors, on additional factors which should also be considered, and on who should be responsible for developing this information. EPA also solicits comments on who should conduct the analysis (i.e., EPA or the states), and when the analysis should be performed. EPA proposes that outside parties (e.g., the registrant or user groups) interested in retaining the local use of aldicarb, will be responsible for gathering and providing local information needed to rebut EPA's presumption that risks outweigh benefits when the Health Advisory is exceeded.

EPA also requests comment on the analytical approaches it has used to identify the areas in which aldicarb use is most likely to contaminate ground water. In particular, EPA invites consideration of alternative criteria in applying the county-based analysis such as: setting the break points between high, medium, and low ratings for vulnerability at different DRASTIC scores, and giving a higher usage rating to counties in which root crops constitute a larger percentage of use. The criteria which have been used in this analysis are explained in detail in the Technical Support Document. EPA also invites comment on the break points which were used in determining which states need to implement a Management Plan for all or some of its counties.

EPA recognizes that the criteria used in assessing the potential for aldicarb to leach to the ground water and thus whether a county or state needs a Management Plan, create inconsistencies. For example, under the Heath Region assessment, counties which have a high potential to leach would not be subject to a Management Plan or monitoring by the registrant if the counties are not within a state which was part of a crop/Heath Region combination rated high in terms of potential to leach. Similarly, under the county assessment, various areas of a county may have a high potential to leach but the majority of the county has a medium potential to leach. Consequently, the use of aldicarb within that county would not be governed by a Management Plan.

EPA is also seeking comments in three other areas which are pertinent to the regulatory actions proposed. First, comments are being solicited on whether it is appropriate for the registrant to be involved in refining assessments regarding the likelihood of ground water contamination in an area and, if so, how such an assessment should be performed. The areas where such an assessment would occur should also be addressed. For example, instead of relying on a county's DRASTIC rating in a medium vulnerability area, the registrant could be required to assess vulnerability to leaching at the sub-county level, based on such factors as soil type, depth to ground water level, and location of crops which may be treated with aldicarb. This information would then be used as a part of the basis for determining whether a Management Plan would be needed.

EPA is also interested in obtaining additional information on the costs associated with the development and implementation of Management Plans. Another related issue EPA is concerned with is the level of involvement the registrant should have in developing Management Plans. Comments are being solicited both on the appropriateness of registrant involvement in developing Management Plans, and whether there should be a limit to their involvement.

Finally, EPA is soliciting comment regarding the issue of ground water contamination and liability. One unresolved question regarding ground water contamination is who should be responsible for remedial action (e.g. developing, approving, and implementing corrective action plans such as funding clean-up costs or providing an alternate water supply) when contamination results from a registered perticide use. EPA's proposed ground water strategy *(Agricultural Chemicals in Ground Water: Proposed Pesticide Strategy)* discusses this issue in more detail. Ground water contamination and liability is a generic issue which pertains to all pesticides which leach rather than just to aldicarb; consequently, any comments regarding this issue should be made in response to the above document and sent to Ground Water Strategy Project, Office of Pesticide Programs, U.S. Environmental Protection Agency (TS–767C), 401 M St., SW., Washington, DC 20460.

EPA recognizes that this Notice solicits comments on many issues which it will consider in making its final determination on aldicarb. Depending on the significance of these comments and how much EPA deviates from the actions proposed in this Notice, EPA may repropose regulatory actions prior to making its final determination.

V. Procedural Matters

A. Referral to the Secretary of Agriculture and the Scientific Advisory Panel

As provided in 40 CFR 153.31(b), EPA will transmit copies of this Notice and the Technical Support Document, to the Secretary of Agriculture and the Scientific Advisory Panel for comment. If either the Secretary or the Panel comments in writing on EPA's proposed action within 30 days of receipt of the draft Notice and supporting documents, EPA will publish any comments received from the Secretary or the Panel, and EPA's responses, in the Notice of Final Determination.

B. Procedures for Responding to Notice of Final Determination

Registrants, applicants, and other interested parties who would be adversely affected by any decision to cancel or deny applications for the registration of aldicarb products would be entitled to request a hearing in which to contest EPA's final decision to cancel registrations and deny applications for failure to comply with the modifications to registration listed in any final Notice of Intent to Cancel. Under FIFRA, such persons must submit their requests for a hearing within 30 days either following receipt of any final Notice of Intent to Cancel of Notice of Denial or following its publication in the **Federal Register**, whichever is later. As EPA will explain in detail in any final Notice of Intent to Cancel or Notice of Denial, a hearing request must contain information concerning the basis of the request. If a timely, properly formulated hearing request is submitted and a hearing is initiated, the product registrations which

are the subject of the request will remain in effect during the cancellation hearing. Similarly, applications for registration with respect to which valid and timely hearing requests have been filed remain pending unless and until they are denied or granted by order of the Administrator at the conclusion of the hearing.

If a proper and timely hearing request is not submitted for a product, registration of that product would be cancelled. A final cancellation would have the effect of prohibiting further sale and distribution except as specified in the existing stocks provision of the Notice.

It should be noted that registrants are not required to request a hearing at this time in order to be allowed to continue to sell and distribute their products within this period.

VI. Public Comment Opportunity

EPA is providing a 90-day period to comment on this Notice and on the Aldicarb Technical Support Document. EPA is particularly soliciting comments on the issues discussed in Unit IV of this Notice. Comments must be submitted by September 27, 1988. All comments and information should be submitted in triplicate to the address given in this Notice under **ADDRESS**, to facilitate the work of EPA and others interested in inspecting them. The comments and information should bear the indentifying notation OPP–30000/39A. All comments, information, and analyses which come to the attention of EPA may serve as a basis for final determination of regulatory action during the Special Review.

During the comment period, interested members of the public of registrants may request a meeting to discuss factual information available to EPA, to present any factual information, to respond to presentations by other persons, or to discuss what regulatory actions should be taken regarding aldicarb products. Persons interested in arranging such meetings should contact the Review Manager listed in this Notice under **FOR FURTHER INFORMATION CONTACT.**

VII. Public Docket

Pursuant to 40 CFR 154.15, EPA has established a public docket (OPP–30000/39A) for the Aldicarb Special Review. The public docket includes (1) this Notice; (2) any other notices pertinent to the Aldicarb Special Review; (3) non-CBI documents and copies of written comments or other materials submitted to the EPA in response to this Notice, and any other Notice, regarding aldicarb submitted at any time during the Special Review process by any person outside government; (4) a transcript of any public meeting held by EPA for the purpose of gathering information on aldicarb; (5) memoranda describing each meeting held during the Special Review process between EPA personnel and any person outside government pertaining to aldicarb; and (6) a current index of materials in the aldicarb public docket.

On a monthly basis, EPA will distribute a compendium of indices for newly received comments and documents that have been placed in the public docket for this Special Review. This compendium will be distributed by mail to those members of the public who have specifically requested such material for this Special Review, pursuant to 40 CFR 154.15(f)(3).

Dated: June 21, 1988.

John A. Moore,

Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 88–14614 Filed 6–28–88; 8:45 am]

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Federal Register

Wednesday
June 29, 1988

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 204, et al.

Fishery Conservation and Management; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 204, 280, 285, 296, 602, 611, 619, 620, 621, 630, 638, 640, 641, 642, 645, 646, 649, 650, 651, 652, 653, 654, 655, 657, 658, 661, 662, 663, 669, 672, 674, 675, 676, 680, 681, 683, and 685

[Docket No. 80597-8097]

Fishery Conservation and Management

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule, technical amendment.

SUMMARY: By this rule, NOAA amends the regulations governing fishing in the exclusive economic zone. This is a housekeeping measure which has no effect on management of the fisheries. The rule amends regulatory language to remove outdated material, conform to current law, and bring together in a new part the regulations common to all domestic fisheries. The intended effect is to assure consistency among the regulations for various fisheries, eliminate redundancy, and reduce publication costs.

EFFECTIVE DATE: June 28, 1988.

FOR FURTHER INFORMATION CONTACT: Donna D. Turgeon, Fishery Management Officer, 202-673-5315.

SUPPLEMENTARY INFORMATION: Chapter VI of Title 50 implements regulations under the Magnuson Fishery Conservation and Management Act. Part 602 sets forth guidelines for fishery management plans, Part 611 regulates foreign fishing, Part 619 contains procedures for preempting State management, Part 621 states enforcement policies, and Parts 630 through 685 govern specific domestic fisheries.

Parts 630 through 685 contain sections repeating identical text of definitions, statements of relation to other laws, and regulations regarding prohibitions and facilitation of enforcement. This technical amendment brings these items together in a new Part 620, which is referenced in the parts governing the domestic fisheries. This rearrangement lessens the bulk of the regulations and reduces future printing costs without inconveniencing users. In addition, this rule (1) removes references to Part 671—Tanner Crab off Alaska, because this part has been repealed (52 FR 17577, May 11, 1987); (2) redefines the fishery conservation zone as the exclusive economic zone; (3) corrects, due to a recent move of the Washington, DC, headquarters of NMFS, the office address and telephone numbers where they appear in the regulations; and (4) makes minor changes in wording to assure internal consistency.

Similar minor corrections are made to regulations in Chapter II of Title 50 governing fishing under authorities other than the Magnuson Act. In Part 204, references to sections in Parts 256 and 258 are removed because those parts have been removed.

Further corrections have been made through final rules published in the **Federal Register** after September 30, 1987, the most recent publication of 50 CFR Parts 200 to 599 and 50 CFR Parts 600 to end, as follows:

Part 611—53 FR 13410, April 25, 1988;
Part 640—53 FR 17194, May 16, 1988;
Part 649—52 FR 46088, December 4, 1987;
Part 653—53 FR 244, January 6, 1988 (expires June 28, 1988);
Part 657—53 FR 4982, February 19, 1988;
Part 661—52 FR 49019, December 29, 1987;
Part 663—53 FR 22001, June 13, 1988;
Part 672—53 FR 7756, March 10, 1988; and
Part 681—52 FR 47572, December 15, 1987.

Classification

NOAA issues this final rule, technical amendment to conform the regulations to current law and circumstances. This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10.

Because this is a technical amendment and has no substantive effect, the Administrator of NOAA determined that it is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds that, because the changes made by this technical amendment are only minor corrections which will have no substantive effect and in which the public is not particularly interested, it is unnecessary to seek prior public comment or delay the effective date under 5 U.S.C. 553.

Because a notice of proposed rulemaking is not required for this technical amendment under 5 U.S.C. 553 or any other law, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act.

This rule does not impose any new collection of information requirement for purposes of the Paperwork Reduction Act.

The Under Secretary, NOAA, determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Chs. II and VI

Fisheries.

Dated: June 17, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set forth above, 50 CFR Parts 204, 280, 285, 296, 602, 611, 619, 621, and 630 through 685 are amended, and a new Part 620 is added, as follows:

PART 204—[AMENDED]

1. The authority citation for Part 204 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, (1982).

§ 204.1 [Amended]

2. In § 204.1(b), in the table, the lines beginning "§ 256.4", "§ 256.11", "§ 258.4", "§ 258.22", and "§ 258.33" are removed; and the reference to "§ 638.4(h)" is revised to read "§ 638.7".

PART 280—[AMENDED]

3. The authority citation for Part 280 continues to read as follows:

Authority: Sec. 6, 64 Stat. 778, as amended; 16 U.S.C. 955.

§ 280.2 [Removed]

4. Section 280.2 is removed. Section 280.1 is redesignated § 280.2. A new § 280.1 is added, to read as follows:

§ 280.1 Purpose and scope.

The regulations in this part implement the Commission's recommendations for the conservation of yellowfin tuna so far as they affect vessels and persons subject to the jurisdiction of the United States.

§ 280.2 [Amended]

5. In newly redesignated § 280.2, the definitions for *Act* and *Convention* are removed; and in the definition for *Authorized officer*, in paragraph (b), the words "certified enforcement or" are removed.

§ 280.17 [Redesignated as § 280.3]

6. The section headings "§§ 280.3-280.16 [Reserved]" and "§ 280.19-280.20

[Reserved]" are removed; and § 280.17 is redesignated § 280.3.

PART 285—[AMENDED]

7. The authority citation for Part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

§ 285.2 [Amended]

8. In § 285.2, in the definition for *Authorized officer*, in paragraph (b), the words "Special Agent" are not capitalized and in the definition for *Regional Director*, in paragraph (b), the word "Massachusetts" is revised to read "MA".

9. In § 285.4, the section heading is revised; in paragraph (b), the word "Agents" is not capitalized and the word "the" is removed before "NMFS"; paragraph (d)(2) is revised; in paragraph (d)(3), a final sentence is added; in paragraph (d)(4), the phrase "Failure of a vessel's operator to stop his vessel" is revised; footnote 1 is removed from paragraph (f)(1); and paragraph (f)(4) is removed, to read as follows:

§ 285.4 Facilitation of enforcement.

* * * * *

(d) * * *

(2) VHF–FM radiotelephone is the preferred method of communicating between vessels. If the size of the vessel and the wind, sea, and visibility conditions allow, a loudhailer may be used instead of the radio. Hand signals, placards, high frequency radiotelephone, or voice may be employed by an authorized officer, and message blocks may be dropped from an aircraft.

(3) * * * In the International Code of Signals, "L" (. — . .) [1] means "you should stop your vessel instantly."

(4) Failure of a vessel's operator promptly to stop the vessel * * *

* * * * *

§ 285.20 [Amended]

10. In § 285.20, in paragraph (a)(4), the first occurrence of the word "data" is revised to read "date"; and in paragraph (b)(3), the words "Any vessels" are revised to read "A vessel".

§ 285.28 [Amended]

11. In § 285.28, in paragraph (h), the word "the" before "NMFS" is removed; in paragraph (l), the words "shall void" are revised to read "voids".

§ 285.52 [Amended]

12. In § 285.52, the word "shall" is revised to read "must".

[1] Period (.) means a short flash of light; dash (—) means a long flash of light.

§ 285.53 [Amended]

13. In § 285.53, in paragraphs (a) introductory text and (a)(2), the word "shall" is revised to read "must"; and in paragraph (b), the words "shall have" are revised to read "has".

§ 285.54 [Amended]

14. In § 285.54, in paragraph (a), the word "shall" is revised to read "must"; in paragraph (b), the words "shall be subject" and "shall be removed" are revised to read "are subject" and "may be removed", respectively; and the words "the National Marine Fisheries Service" are revised to read "NMFS"; in paragraph (c), the words "shall notify" and "shall include" are revised to read "must notify" and "must include", respectively; and in paragraph (d), the words "shall be" are revised to read "is".

§ 285.83 [Amended]

15. In § 285.83, in paragraph (a) introductory text, the words "shall cause to be made" are revised to read "will make"; in paragraph (a)(3), the word "shall" is revised to read "will"; in paragraph (b), the words "shall have" and "shall contain" are revised to read "has" and "must contain", respectively; and in paragraph (c), the words "promptly shall cause such", "shall consider", "shall exist", and "shall be" are revised to read "will promptly conduct an", "will consider", "exists", and "will be", respectively.

§ 285.84 [Amended]

16. In § 285.84, the references to § 285.33" and "§ 285.35" are revised to read "§ 285.83" and "§ 285.35", respectively; the words "pursuant to the provisions of" are revised to read "under"; and the words "shall be determined", "shall publish", "shall be denied", "shall be established", "shall not be", and "shall be required" are revised to read "is determined", "will publish", "will be denied", "is established", "will not be", and "will be required", respectively.

§ 285.85 [Amended]

17. In § 285.85, in paragraph (a) introductory text, the references to "§ 285.33" and "§ 285.34" are revised to read "§ 285.83" and "§ 285.84", respectively, and the words "shall be deemed to be" are revised to read "is".

§ 285.86 [Amended]

18. In § 285.86, the references to "285.34" are revised to read § "285.84" and the word "shall", wherever it appears, is revised to read "will".

§ 285.103 [Amended]

19. In § 285.103, in paragraph (a), the words "shall be reported", "shall be entitled", "shall sign", "shall note", and "shall be given" are revised to read "must be reported", "is entitled", "must sign", "will note", and "will be given", respectively; and in paragraph (b), the word "shall" is revised to read "must".

§§ 285.5, 285.29 and 285.31 [Amended]

20. In addition to the amendments set forth above, the word "the" before "NMFS" is removed in the following places:

§ 285.5(c);

§ 285.29 (a), (b), and (c); and

§ 285.31(a)(22).

PART 296—[AMENDED]

21. The authority citation for Part 296 continues to read as follows:

Authority: Pub. L. 97–212 (43 U.S.C. 1841 *et seq.*)

§ 296.5 [Amended]

22. In § 296.5, in paragraph (a)(2), in the addresses, the State names "Massachusetts", "Florida", "California", and "Alaska" are revised to read "MA", "FL", "CA", and "AK", respectively, and the address and telephone number "3300 Whitehaven Street NW., Washington, D.C. 20235, (202) 634–4688" are revised to read "1825 Connecticut Avenue N.W., Washington, DC 20235, (202) 673–5424"; and in paragraphs (a)(3) and (c), the street address "3300 Whitehaven Street, NW.", is revised to read "1825 Connecticut Avenue, NW.".

PART 602—[AMENDED]

23. The authority citation for Part 602 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

24. In § 602.2(b), the line "FCZ—fishery conservation zone." is removed and a new line is added in alphabetical order, to read as follows:

§ 602.2 Style guide.

* * * * *

(b) * * *

* * * * * *

EEZ—Exclusive economic zone.

* * * * *

§§ 602.12, 602.13 and Appendix A [Amended]

25. In addition to the amendment set forth above, the initials "FCZ" are removed and the initials "EEZ" are added in their place in § 602.12(c)(1); in § 602.13(d)(2); and in Part 602, Appendix

A to Subpart B, Standard 3, second paragraph.

PART 611—[AMENDED]

26. The authority citation for Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

27. In § 611.2, the definition for *Fishery conservation zone (FCZ)* is removed and the definitions for *Exclusive economic zone (EEZ)* and *Fishing*, or *to fish* are revised to read as follows:

§ 611.2 Definitions.

* * * * *

Exclusive economic zone (EEZ) means the zone established by Presidential Proclamation 5030, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

* * * * *

Fishing, or *to fish*, means any activity, other than scientific research conducted by a scientific research vessel, which involves—

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a), (b), or (c) of this definition.

* * * * *

Subpart A—[Amended]

28. In Subpart A, Appendix C, Figures 1a., 2., 3., and 4., are revised, to read as follows:

BILLING CODE 3510-22-M

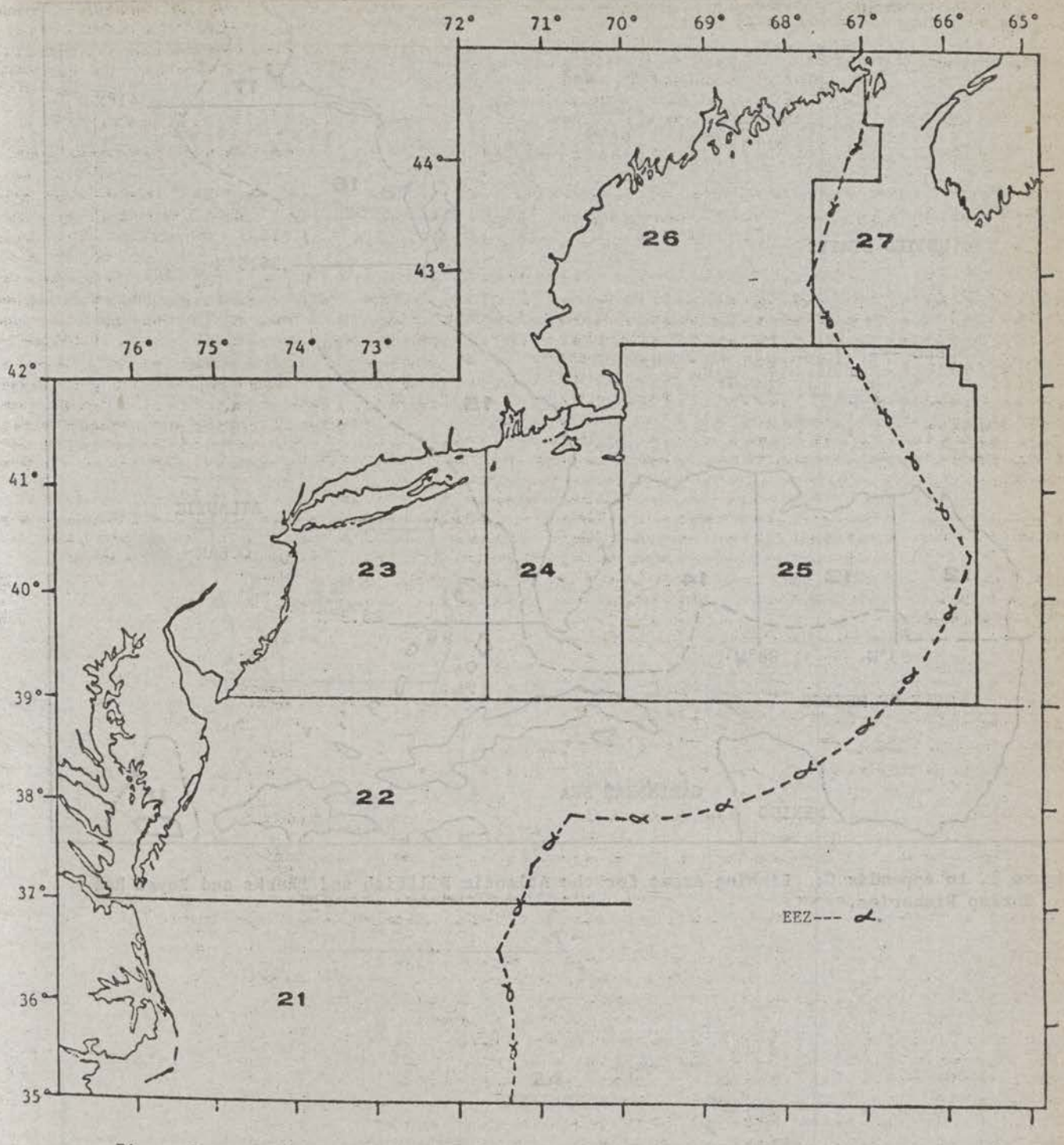


Figure 1a. to Appendix C: Fishing Areas for the Northwest Atlantic Ocean and Hake Fisheries for the purposes of 50 CFR 611.4(c).

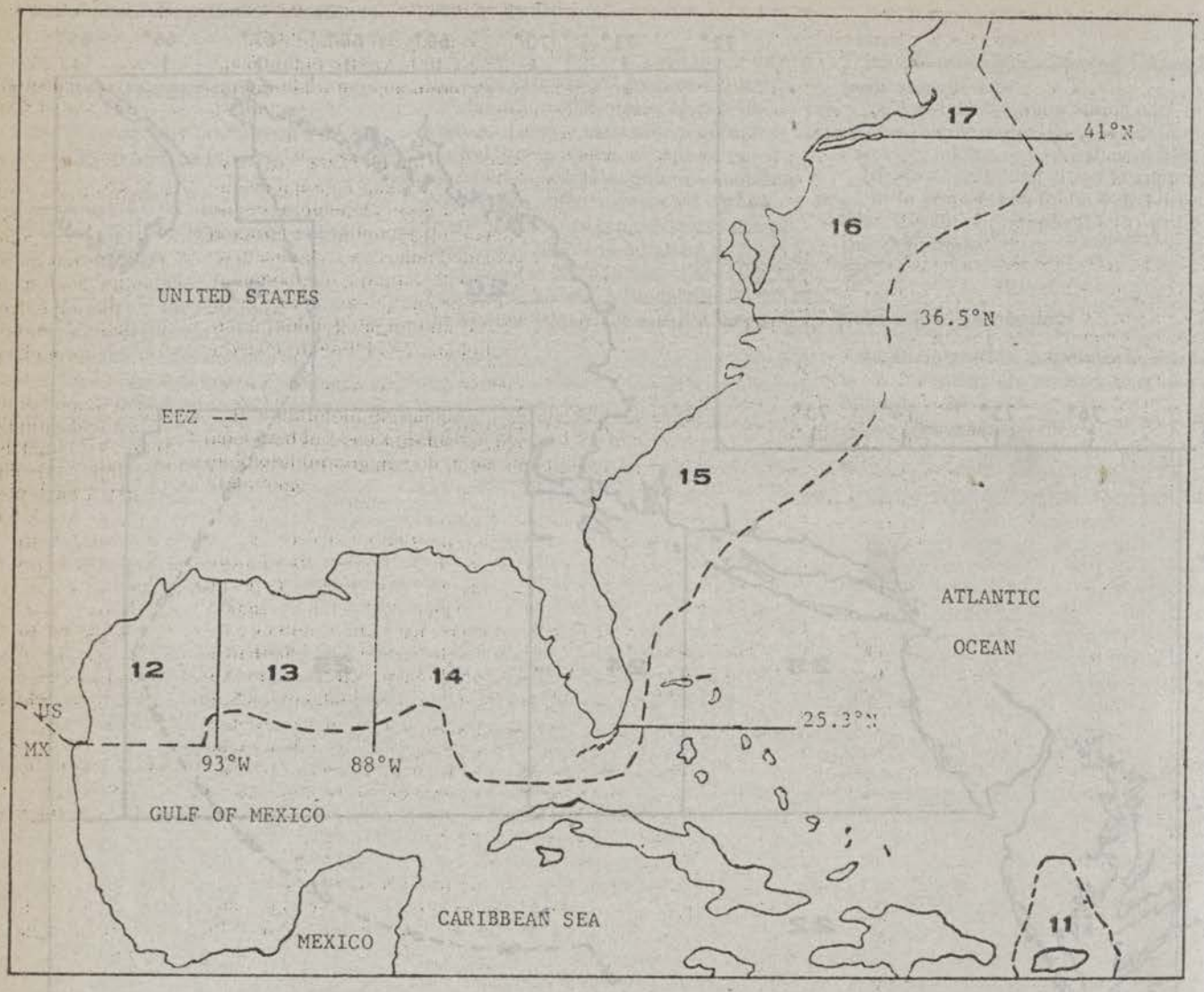


Figure 2. to Appendix C: Fishing Areas for the Atlantic Billfish and Sharks and Royal Red Shrimp Fisheries.

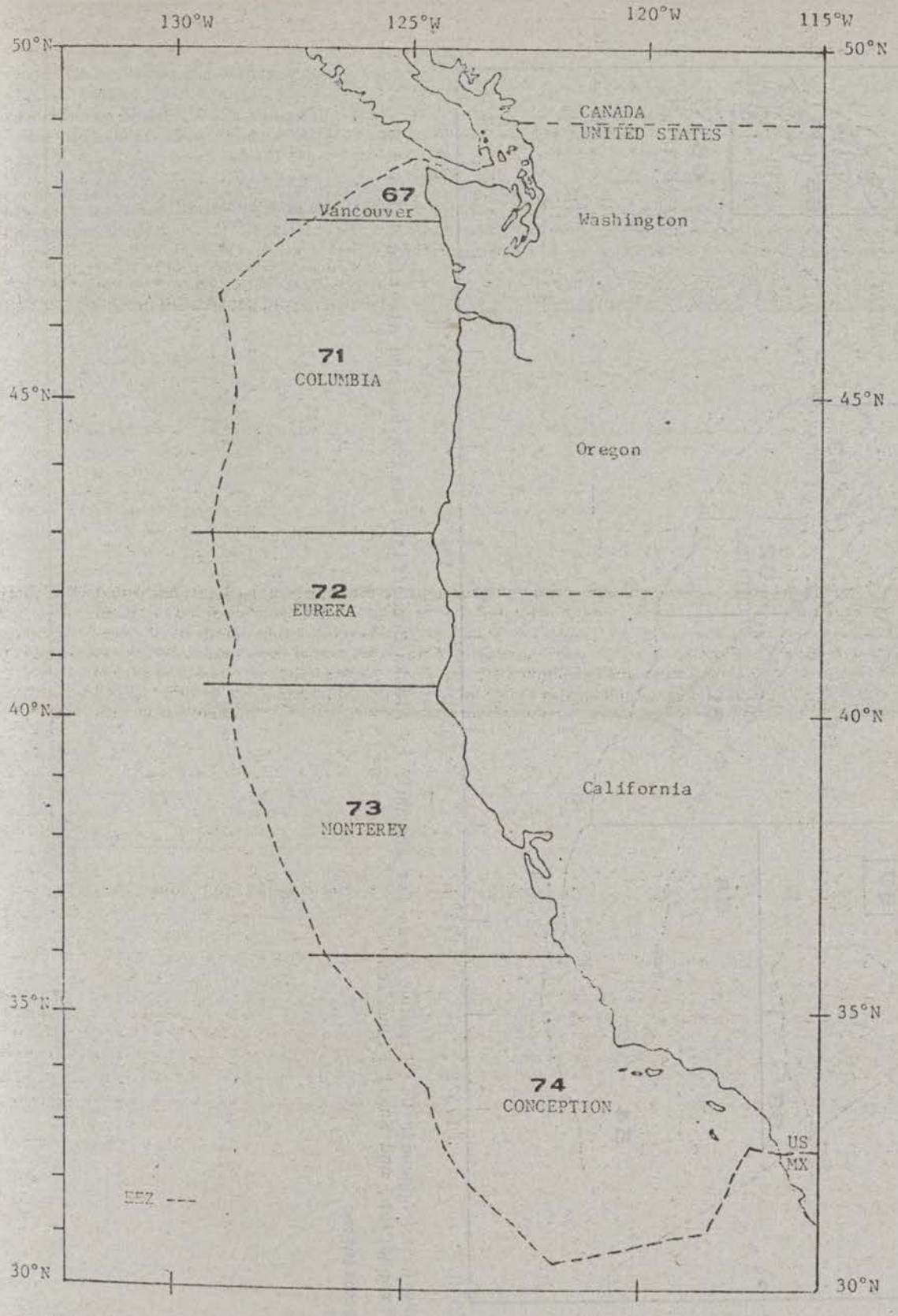


Figure 3. to Appendix C: Fishing Areas for the Pacific Coast Groundfish and the Pacific Billfish and Sharks Fisheries.

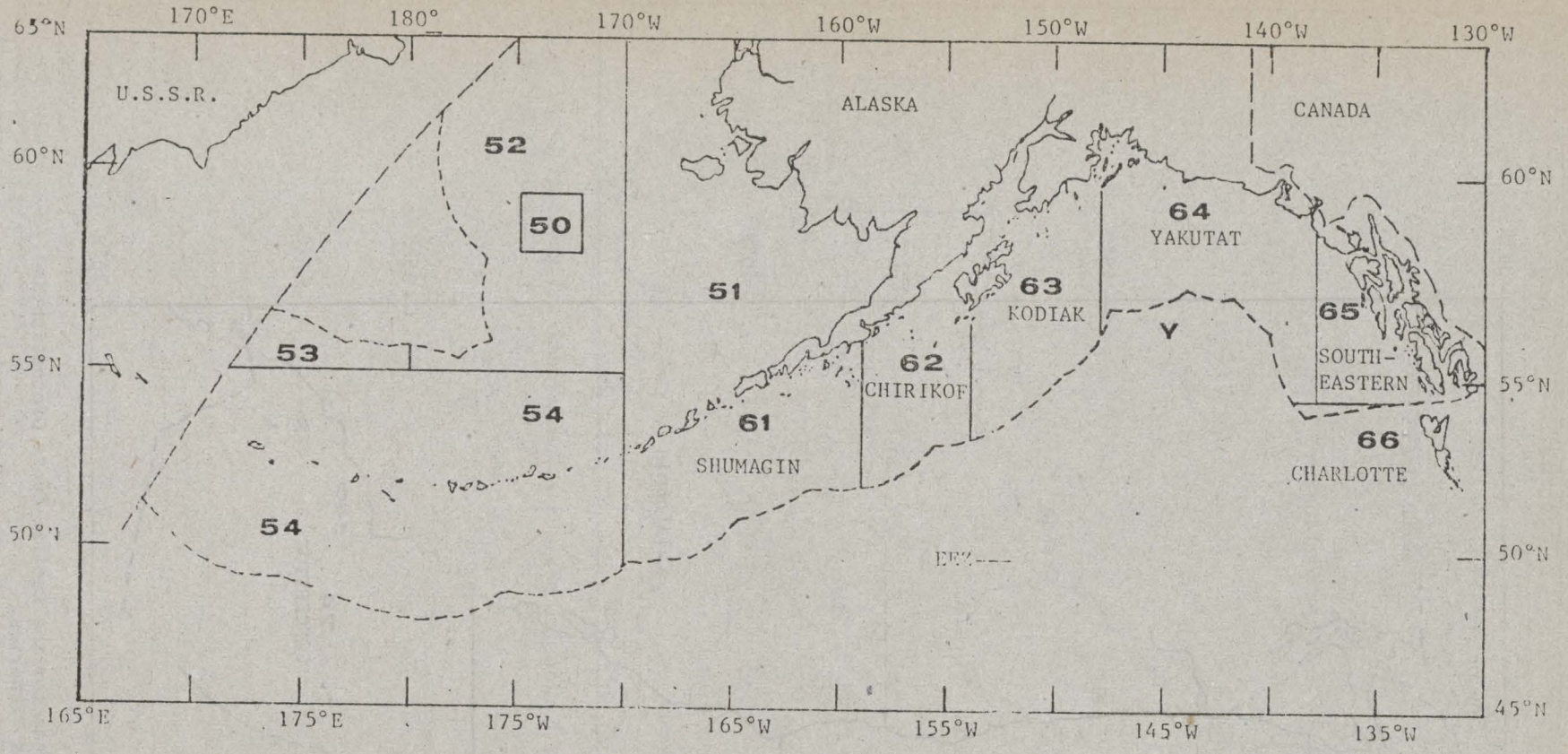


Figure 4. to Appendix C: Fishing Areas for the Gulf of Alaska Groundfish, Bering Sea and Aleutian Islands Groundfish, and Snail Fisheries.

BILLING CODE 3510-22-C

§611.20 [Amended]

29. In § 611.20(c), the words "Management, F/M1" are revised to read "Conservation and Management, F/CM" and the street address "3300 Whitehaven Street NW." is revised to read "1825 Connecticut Avenue NW.".

§611.50 [Amended]

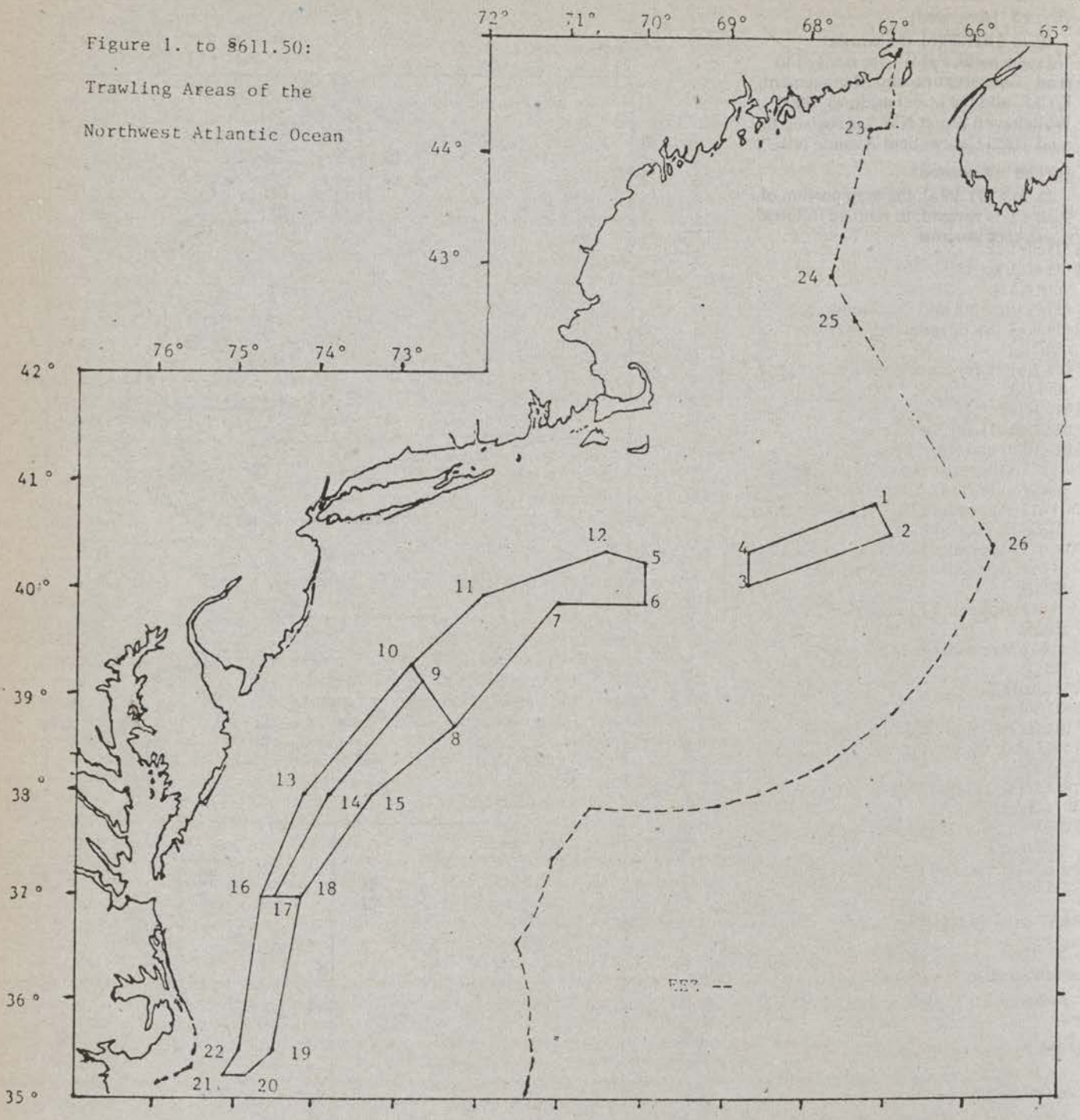
30. In § 611.50(a), the map portion of Figure 1. is revised, to read as follows:

BILLING CODE 3510-22-M

Figure 1. to §611.50:

Trawling Areas of the

Northwest Atlantic Ocean



BILLING CODE 3510-22-C

§§ 611.3, 611.4, 611.7, 611.8, 611.9, 611.10, 611.12, 611.15, Appendices B, C, F, I, J and K to Subpart A, §§ 611.22, 611.50, 611.60, 611.61, 611.62, 611.70, 611.80, 611.82, 611.90, and 611.92 [Amended]

31. In addition to the amendments set forth above, the phrases "fishery conservation zone" or "fishery conservation zone (FCZ)" or the initials "FCZ" are removed wherever they appear and the initials "EEZ" are added in their place in the following places:
§ 611.3(e)(2);
§ 611.4(a), (c)(1), (2), (3), (7), (8), and (9), and (f)(1);
§ 611.7(a)(8), (9), and (23), and (b)(2);
§ 611.8(a), (b), introductory text and (b)(1);
§ 611.9(a)(2), (c) introductory text, (d)(1), and (h);
§ 611.10(e);
§ 611.12(c)(1), (2), and (3);
§ 611.15(a) and (b);
Part 611, Appendix B to Subpart A: paragraphs 3., 4., 8., 9., 10., and 12.;
Part 611, Appendix C to Subpart A: A.1., B., C., D., E., and F.
Part 611, Appendix F to Subpart A: C.1.;
Part 611, Appendix I to Subpart A: B.3.(f);
Part 611, Appendix J to Subpart A: B.3.(f);
Part 611, Appendix K to Subpart A: B.3.(f);
§ 611.22(f)(2);
§ 611.50(a);
§ 611.60(a)(1) and (2), (c)(2), and (d);
§ 611.61(a);
§ 611.62(a);
§ 611.70(a) and (j)(4)(iv);
§ 611.80(a);
§ 611.82(a), (b)(1) introductory text (f), and (h)(2);
§ 611.90(a), (d), and (f)(1) and (2); and
§ 611.92(a).

PART 619—[AMENDED]

32. The authority citation for Part 619 continues to read as follows:

Authority: 5 U.S.C. 552(a); 16 U.S.C. 1801 *et seq.*

§§ 619.3 and 619.4 [Amended]

33. In § 619.3, in the definition for *Predominantly*, and in § 619.4(a)(1) and (b), the words "fishery conservation zone (FCZ)" or the initials "FCZ" are removed and the initials "EEZ" are added in their place.

34. A new Part 620 is added, to read as follows:

PART 620—GENERAL PROVISIONS FOR DOMESTIC FISHERIES

Sec.
620.1 Purpose.
620.2 Definitions.
620.3 Relation to other laws.
620.4 Permits.
620.5 Recordkeeping and reporting.
620.6 Vessel and gear identification.
620.7 General prohibitions.
620.8 Facilitation of enforcement.
620.9 Penalties.

Authority: 16 U.S.C. 1801 *et seq.*

§ 620.1 Purpose.

The purpose of this part is to collect and display the general provisions common to all domestic fishing regulations appearing at Parts 630 through 699 of this chapter.

§ 620.2 Definitions.

In addition to the definitions in the Magnuson Act, the terms used in this part and in Parts 630 through 699 of this chapter have the following meanings:

Administrator means the Administrator of NOAA (Under Secretary of Commerce for Oceans and Atmosphere) or a designee.

Area of custody means any vessel, building, vehicle, live car, pound, pier, or dock facility where fish might be found.

Assistant Administrator means the Assistant Administrator for Fisheries, NOAA, or a designee.

Authorized officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of NMFS;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Catch, take, or *harvest* includes, but is not limited to, any activity which results in killing any fish or bringing any live fish on board a vessel.

Dealer means the person who first receives fish by way of purchase, barter, or trade.

Exclusive economic zone (EEZ) means the zone established by Presidential Proclamation 5030, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fish means any finfish, mollusk, crustacean, or parts thereof, and all other forms of marine animal and plant life other than marine mammals, birds, and highly migratory species of tuna.

Fishery resource means any fish, any stock of fish, any species of fish, and any habitat of fish.

Fishing, or *to fish*, means any activity, other than scientific research conducted by a scientific research vessel, which involves:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, as amended.

NMFS means the National Marine Fisheries Service, NOAA.

NOAA means the National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

Official number means the documentation number issued by the U.S. Coast Guard or the certificate number issued by a State or by the U.S. Coast Guard for an undocumented vessel.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by a person described in paragraph (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State,

local, or foreign government or any entity of any such government.

Retain, retain aboard, or *retain on board* means to fail to return fish to the sea after a reasonable opportunity to sort the catch.

Secretary means the Secretary of Commerce, or a designee.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

U.S. fish processors means facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.

U.S.-harvested fish means fish caught, taken or harvested by vessels of the United States within any fishery regulated under the Magnuson Act.

Vessel of the United States means:

(a) Any vessel documented under Chapter 121 of Title 46, United States Code;

(b) Any vessel numbered under Chapter 123 of Title 46, United States Code, and measuring less than 5 net tons;

(c) Any vessel numbered under Chapter 123 of Title 46, United States Code, and used exclusively for pleasure; and

(d) Any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

§ 620.3 Relation to other laws.

(a) *General.* Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities. Vessel operators may wish to refer to U.S. Coast Guard regulations at U.S.C. Titles 33—Navigation and Navigable Waters and 46—Shipping, to 15 CFR Part 904 Subpart D—Permit Sanctions and Denials, and to U.S.C. Title 43—Public Lands (in regard to marine sanctuaries).

(b) *State responsibilities.* Certain responsibilities relating to data collection and enforcement may be performed by authorized State personnel under a State/Federal agreement for data collection and a tripartite agreement among the State, the U.S. Coast Guard, and the Secretary for enforcement.

(c) *Submarine cables.* Fishing vessel operators must exercise due care in the conduct of fishing activities near submarine cables. Damage to the submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) which implements the International Convention for the Protecion of Submarine Cables. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than one nautical mile from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than one-quarter nautical mile from a buoy or buoys intended to mark the position of a cable when being laid or when out of order or broken.

(d) *Marine mammals.* Regulations governing permits and certificates of inclusion for the taking of marine mammals are set forth at Part 216 of this title.

(e) *Halibut fishing.* Fishing for halibut is governed by regulations of the International Pacific Halibut Commission set forth at Part 301 of this title.

(f) *Marine sanctuaries.* All fishing activity, regardless of species sought, is prohibited under 15 CFR Part 924 in the U.S.S. Monitor Marine Sanctuary, which is located approximately 15 miles southwest of Cape Hatteras off the coast of North Carolina.

§ 620.4 Permits.

Regulations pertaining to permits required for certain fisheries are set forth in the parts governing those fisheries.

§ 620.5 Recordkeeping and reporting.

Regulations pertaining to records and reports required for certain fisheries are set forth in the parts governing those fisheries.

§ 620.6 Vessel and gear identification.

Regulations pertaining to special vessel and gear markings required for certain fisheries are set forth in the parts governing those fisheries.

§ 620.7 General prohibitions.

It is unlawful for any person to do any of the following:

(a) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, import, or export, any fish or parts thereof taken or retained in violation of the Magnuson Act or any regulation or permit issued under the Magnuson Act.

(b) Transfer or attempt to transfer, directly or indirectly, any U.S.-harvested fish to any foreign fishing vessel, while such vessel is in the EEZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson Act which authorizes the receipt by such vessel of U.S.-harvested fish.

(c) Fail to comply immediately with enforcement and boarding procedures specified in § 620.8 of this part.

(d) Refuse to allow an authorized officer to board a fishing vessel or to enter areas of custody for purposes of conducting any search, inspection, or seizure in connection with the enforcement of the Magnuson Act.

(e) Dispose of fish or parts thereof or other matter in any manner, after any communication or signal from an authorized officer, or after the approach by an authorized officer or an enforcement vessel.

(f) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search, inspection, or seizure in connection with enforcement of the Magnuson Act.

(g) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by the Magnuson Act.

(h) Resist a lawful arrest for any act prohibited under the Magnuson Act.

§ 620.8 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to Parts 630 through 699 of this chapter must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this chapter.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) VHF-FM radiotelephone is the preferred method for communicating between vessels. If the size of the vessel and the wind, sea, and visibility conditions allow, a loudhailer may be used instead of the radio. Hand signals, placards, high frequency radiotelephone, or voice may be employed by an authorized officer, and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop. In the

International Code of Signals, "L" (.–..)[1] means "you should stop your vessel instantly."

(4) Failure of a vessel's operator promptly to stop the vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF-FM, if so equpped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer or observer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.—.—) is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.—. —.— — —.—. —.— —) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... — —.— ...— —) means "you should stop or heave to; I am going to board you."

§ 620.9 Penalties.

Any person committing or fishing vessel used in the commission of a violation of the Magnuson Act or any regulation issued under the Magnuson Act, is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Magnuson Act, to Part 621 of this chapter, to 15 CFR Part 904 (Civil Procedures), and to other applicable law.

PART 621—[AMENDED]

35. The authority citation for Part 621 continues to read as follows:

Authority: 16 U.S.C. 1801–1882.

§§ 621.1 and 621.2 [Amended]

36. In § 621.1 (a), (b), and (c); and in § 621.2(a) introductory text and (a)(4), (b), and (c), the word "Magnuson" is added before "Act".

37. Section 621.3 is revised, to read as follows:

§ 621.3 Definitions.

Terms used in this part have the meanings prescribed in section 3 of the Magnuson Act and as set forth in § 620.2 of this chapter.

PARTS 630, 638, 640, 641, 642, 645, 646, 649, 650, 651, 652, 653, 654, 655, 657, 658, 661, 662, 663, 669, 672, 674, 675, 676, 680, 681, 683, AND 685—[AMENDED]

38. The authority citation for Parts 630 through 685 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

39. In §§ 630.2, 638.2, 640.2, 641.2, 645.2, 646.2, 649.2, 650.2, 651.2, 652.2, 653.2. 654.2, 655.2, 657.2, 658.2, 661.3, 662.2, 663.2, 669.2, 672.2, 674.2, 675.2, 676.2, 680.2, 681.2, 683.2, and 685.2, the definitions for *Act, Administrator, Area* (or *Areas*) *of Custody, Assistant Administrator, Authorized Officer, Catch, take, or harvest, Dealer, Exclusive economic zone (EEZ), Fish, Fishery conservation zone (FCZ), Fishing, Fishing Vessel, Magnuson Act, NMFS, NOAA, Official number, Operator, Owner, Person, Secretary, State, U.S. fish processors, U.S.-harvested fish,* and *Vessel of the United States,* wherever they appear, are moved. The introductory text of each section is revised, and in § 661.3 is added, to read as follows:

§ 630.2, § 638.2, § 640.2, § 641.2, § 642.2, § 645.2, § 646.2, § 649.2, § 650.2, § 651.2, § 652.2, § 653.2, § 654.2, § 655.2, § 657.2, § 658.2, § 661.3, § 666.2, § 663.2, § 669.2, § 672.2, § 674.2, § 675.2, § 676.2, § 680.2, § 681.2, § 683.2, and § 685.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

* * * * *

40. Sections 630.3, 641.3, 645.3, 649.3, 650.3, 652.3, and 669.3 are revised to read as follows:

§ 630.3, § 641.3, § 645.3, § 649.3, § 650.3, § 652.3, and § 669.3 Relation to other laws.

The relation of this part to other laws is set forth in § 620.3 of this chapter.

41. In §§ 638.3 and 658.3, paragraph (c) is removed and paragraph (a) is revised; in § 640.3, paragraphs (b) and (c) are removed, paragraph (a) is redesignated (b), and a new paragraph (a) is added; in §§ 642.3 and 646.3, paragraph (b) is removed, paragraph (c) is redesignated (b), and paragraph (a) is revised; in § 649.3, the first sentence is removed, the second sentence is designated as paragraph (b), and a new paragraph (a) is added; in § 657.3, the section heading and paragraph (a) are revised; in § 680.3 the existing text is designated as paragraph (b), the word "herein" is revised to read "in this part", and a new paragraph (a) is added; in §§ 681.3, 683.3, and 685.3, the section heading is revised, the existing text is designated as paragraph (b), and a new paragraph (a) is added, to read as follows:

§ 638.3, § 640.3, § 642.3, § 646.3, § 649.3, § 657.3, § 658.3, § 680.3, § 681.3, § 683.3, and § 685.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

* * * * *

42. In § 651.3, the section heading is revised; paragraph (b) is removed, paragraph (a) is redesignated (b), and a new paragraph (a) is added; in § 653.3, paragraph (a) is revised, paragraph (b) is removed, and paragraphs (c) and (d) are redesignated (b) and (c) respectively; in § 654.3, paragraphs (a) and (b) are redesignated (b) and (c), respectively, a new paragraph (a) is added, and in newly redesignated paragraph (c), the second sentence is removed; in §§ 663.3 and 676.3, paragraphs (a) and (b) are redesignated (b) and (c), respectively, and a new paragraph (a) is added, to read as follows:

§ 651.3, § 653.3, § 654.3, § 663.3, and § 676.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter

[1] Period (.) means a short flash of light; dash (—) means a long flash of light.

and paragraphs (b) and (c) of this section.

* * * * *

43. The section headings for §§ 630.5, 641.5, 642.5, 645.5, 649.5, 650.5, 651.5, 652.5, 653.5, 655.5, 658.5, 661.4, 663.4, 669.5, 672.5, 674.5, 675.5, 683.4, and 685.4, are revised to read "Recordkeeping and reporting."

44. Sections 630.8, 638.6, 640.8, 641.8, 642.8, 645.8, 646.7, 649.8, 650.8, 651.8, 652.8, 653.8, 654.7, 655.8, 657.5, 658.8, 661.6, 662.7, 663.8, 669.8, 672.8, 674.8, 675.8, 676.6, 680.8, 681.8, 683.7, and 685.6 are revised to read as follows:

§ 630.8, § 638.6, § 640.8, § 641.8, § 642.8, § 645.8, § 646.7, § 649.8, § 650.8, § 651.8, § 652.8, § 653.8, § 654.7, § 655.8, § 657.5, § 658.8, § 661.6, § 662.7, § 663.8, § 669.8, § 672.8, § 674.8, § 675.8, § 676.6, § 680.8, § 681.8, § 683.7, and § 685.6

Facilitation of enforcement.

See § 620.8 of this chapter.

45. Sections 630.9, 638.7, 640.9, 641.9, 642.9, 645.9, 646.8, 649.9, 650.9, 651.9, 652.9, 653.9, 654.8, 655.9, 657.6, 658.9, 661.7, 662.8, 663.9, 669.9, 672.9, 674.9, 675.9, 676.7, 680.9, 681.9, 683.8, and 685.7 are revised to read as follows:

§ 630.9, § 638.7, § 640.9, § 641.9, § 642.9, § 645.9, § 646.8, § 649.9, § 650.9, § 651.9, § 652.9, § 653.9, § 654.8, § 655.9, § 657.6, § 658.9, § 661.7, § 662.8, § 663.9, § 669.9, § 672.9, § 674.9, § 675.9, § 676.7, § 680.9, § 681.9, § 683.8, and § 685.7 Penalties.

See § 620.9 of this chapter.

46. In § 630.7, paragraphs (a) introductory text, (a)(5), (7) through (11), (13) through (17), and (b) are removed; paragraphs (a)(1) through (4), (6), and (12) are redesignated (a) through (f) respectively, each semicolon is removed and a period is added in its place; and new introductory text is added, to read as follows:

§ 630.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

47. In § 638.4, paragraph (h) is removed.

48. In § 638.5, the introductory text is revised; paragraphs (d) and (f) through (1) are removed; paragraph (3) is redesignated (d); each semicolon is removed and a period is added in its place; and in paragraph (a), the reference to "§ 638.4" is revised to read "§ 638.7" as follows:

§ 638.5 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

49. Section 638.7 is redesignated § 638.8 and a new § 638.7 is added to read as follows:

§ 638.7 Recordkeeping and reporting.

Any person holding a permit to take prohibited corals for scientific or educational purposes must submit an annual report of his or her harvest to the Center Director within 30 days following the effective period for the permit. Specific reporting requirements will be provided with the issued permit.

* * * * *

50. In § 640.7, the section heading is revised; paragraphs (a) introductory text, (a)(2), (13) through (18), (21), and (b) are removed; paragraphs (a)(1), (3) through (12), (19), (22), (23), and (24) are redesignated (a) through (o), respectively; paragraph (a)(20) is redesignated (p); in newly redesignated paragraphs (a) through (n), and (p), each semicolon, and in newly redesignated paragraph (n) the word "or" after the semicolon, is removed and a period is added in its place; and new introductory text is added, to read as follows:

§ 640.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

51. In § 641.7, paragraphs (a) introductory text, (a)(11) through (17), and (b) are removed; paragraphs (a)(1) through (10) and (18) are redesignated (a) through (k), respectively; in newly redesignated paragraphs (a) through (j) each semicolon is removed and a period is added in its place; and new introductory text is added, to read as follows:

§ 641.7 Prohibitions.

In addition to the general prohibitions specified in § 620.6 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

52. In § 642.7, paragraphs (a) introductory text, (a)(1), (7) through (12), (24), and (b) are removed; paragraphs (a)(2), through (6), (13), through (22), and (25) through (31) are redesignated (a) through (v), respectively; paragraph (a)(23) is redesignated (w); in newly redesignated paragraphs (a) through (u), and (w), each semicolon, and in newly redesignated paragraph (u) the word "or" after the semicolon, is removed and a period is added in its place; and new introductory text is added, to read as follows:

§ 642.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

53. In § 645.7, the introductory text, is revised; paragraphs (b) and (i), through (o) are removed; paragraphs (c) through (h) are redesignated (b) through (g), respectively; each semicolon, is removed and a period is added in its place; and in newly redesignated paragraph (e), the initials "FCZ" are revised to read "EEZ", as follows:

§ 645.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

54. In § 646.6, paragraphs (a) introductory text, (a)(10) through (16), and (b) are removed; paragraphs (a)(1), through (9) and (17) through (21) are redesignated (a) through (n), respectively; newly redesignated paragraphs (a) through (m) are amended by removing the last semicolons, and in newly redesignated paragraphs (m) removing the word "or" after the semicolon, and adding periods in their places; and new introductory text is added, to read as follows:

§ 646.6 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

55. In § 649.7, paragraphs (a) and (b) introductory texts are revised; paragraphs (b) (1), (6) through (9), (11), (12), and (13) are removed; paragraphs (b) (2), (3), (5), and (10) are redesignated (b) (1), (2), (3), and (5), respectively; in paragraphs (a) (1) through (7) and (b)(4), and in newly redesignated paragraphs (b) (1) through (3) and (5), the word "To" is removed and the following word is capitalized, and the last semicolons are removed and periods are added in their places, to read as follows:

§ 649.7 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person issued a permit under § 649.4, or for any person fishing in the EEZ, to do any of the following:

* * * * *

(b) It is unlawful for any person to do any of the following:

* * * * *

§649.22 [Amended]

56. In § 649.22(a)(2), the words "American Lobster Fishery Management Plan" are removed and the initials "FMP" are added in their place.

57. In § 650.7, the introductory text is revised; paragraphs (e), (g) through (j), (l), (m), and (n) are removed; paragraph (d) is redesignated (e); paragraph (f) is redesignated (d); paragraph (k) is redesignated (f); in paragraphs (a), (b), (c), and newly redesignated paragraphs (d), (e), and (f), the word "To" is removed and the following word is capitalized, and each semicolon is removed and a period is added in its place, as follows:

§650.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

58. In § 651.7, paragraph (a) introductory text is revised; paragraphs (b) (6), (7), (11) through (14), (16), (17), and (c) are removed; paragraphs (b) (8), (9), and (18) are redesignated (b) (6), (7) and (8), respectively; paragraphs (b) (10) and (15) are redesignated (b) (9) and (10), respectively; and in paragraphs (a)(1), (b) (1) through (5), and newly redesignated (b) (6), (9), and (10), the semicolon, and in paragraph, (a)(1) the word "and" after the semicolon, is removed and a period is added in its place, to read as follows:

§651.7 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel issued a permit under § 651.4 to do any of the following:

* * * * *

59. In § 652.7, paragraphs (d), (f), and (o) are removed; in paragraph (a) introductory text, the words "No permit holder may" are removed and the word "fish" is capitalized; paragraphs (e), (g), (h) introductory text, and (i) through (n) are redesignated (d) through (l) respectively; in paragraphs (b) and (c) and newly redesignated paragraphs (e), (f) introductory text, and (g) through (i) and (l), the words "No person shall" or "No person may" are removed and the following word is capitalized; in newly redesignated paragraph (d), the words "No person engaged * * * shall" are removed, and the word "unload" is capitalized; in newly redesignated paragraph (k), the words "No dealer * * * may" are removed, the word "knowingly" is capitalized; in newly redesignated paragraph (l), the word "Magnuson" is added before the word "Act"; and new introductory text and a new paragraph (m) are added, to read as follows:

§652.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

(m) Harvest or land surf clams in the Mid-Atlantic area during or after an authorized fishing period if surf clams have been landed during that authorized period.

60. In § 653.7, paragraphs (a) introductory text, (a) (6), (9) through (14), (16), and (b) are removed; paragraph (c) [effective through June 28, 1988] is redesignated (o); paragraph (a)(20) is redesignated (a); paragraphs (a) (1) through (5), (7), and (8), (17), (18), (19), (21), and (22) are redesignated (b) through (m), respectively; paragraph (a)(15) is redesignated (n); in newly redesignated paragraphs (a) through (l) and (n) each semicolon and in newly redesignated paragraph (l) the word "or" after the semicolon, is removed and a period is added in its place; and new introductory text is added, to read as follows:

§653.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

§654.4 [Amended]

61. In § 654.4, in paragraphs (b) (1), (2), (3), and (c)(2) introductory text, the word "shall", wherever it appears, is revised to read "must"; and in paragraph (c)(1), the word "shall" is revised to read "will".

62. In § 654.6, paragraphs (a) introductory text, (a) (1) through (7), and (b) are removed; paragraphs (a) (8) through (24) are redesignated (a) through (q), respectively; in newly redesignated paragraphs (a) through (p) the last semicolons, and in newly redesignated paragraphs (o) and (p) the word "or" after the semicolon, is removed and periods are added in their places; in newly redesignated paragraphs (a), (d), (k), (m), (n), and (o), the initials "FCZ", wherever they appear, are revised to read "EEZ"; and new introductory text is added, to read as follows:

§654.6 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

§654.20 [Amended]

63. In § 654.20, in paragraphs (a), (c), and (d), the world "shall" is revised to read "may".

§654.22 [Amended]

64. In § 654.22, in paragraphs (a) introductory text and (a)(4), the initials "FCZ" are revised to read "EEZ"; and in paragraph (a)(2), the works "Florida Marine Fisheries Commission" are removed and the initials "FMFC" are added in their place.

§654.23 [Amended]

65. In § 654.23, in paragraph (a), the word "and" is removed wherever it appears after the word "latitude", and a comma is added in its place, and the word "point" is added before the point designator "E" in the phrase "extending from E to point F"; and in paragraphs (a), (b)(1)(i) and (ii), and (3), the initials "FCZ" are revised to read "EEZ".

§654.24 [Amended]

66. In § 654.24, in paragraph (a) introductory text, (a)(1), (3), (8)(i)(B), and (b), the initials "FCZ" are revised to read "EEZ"; and in paragraph (a)(2), the words "Florida Marine Fisheries Commission" and the parentheses surrounding "FMFC" are removed.

67. Section 655.3 is revised to read as follows:

§655.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) Vessels fishing within the regulated mesh area defined at § 651.20 of this chapter with cod end mesh size of less than 5.5 inches must apply to fish under the exempted fishery program as set forth in § 651.22 of this chapter.

68. In § 655.7, the section heading is revised; paragraphs (a) introductory text, (a)(2), (3), (4), (6), (7), (9), and (13) are moved; paragraphs (a)(1), (10), (11), (12), (14), (15), and (b) are redesignated (a) through (g), respectively; paragraphs (a)(5) and (8) are redesignated (h) and (i), respectively; in newly redesignated paragraph (g), the words "It is unlawful to" are removed, and the word "violate" is capitalized; in newly redesignated paragraphs (a) through (e) and (i) each semicolon is removed and a period is added in its place; and new introductory text is added, to read as follows:

§655.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is

unlawful for any person to do any of the following:

* * * * *

69. In § 657.4, paragraphs (a) introductory text, (a)(3), (4), (6) through (9), (11), and (b) are removed; paragraphs (a)(1), (2), (5), and (10) are redesignated (a) through (d), respectively, and each semicolon, and in newly redesignated paragraph (d) the word "or" after the semicolon, is removed and a period is added in its place; and new introductory text is added, to read as follows:

§ 657.4 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

70. In § 658.7, paragraphs (a) introductory text, (a)(1), (4), (6) through (10), (12), and (b) are removed; paragraphs (a)(2), (3), (5), and (11) are redesignated (a), (b), (c), and (d), respectively, and each semicolon is removed and a period is added in its place; and new introductory text is added, to read as follows:

§ 658.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

§ 661.1 [Amended]

71. In § 661.1, the words "exclusive economic zone (the EEZ , also known as the 3-to-200-mile zone)" are removed and the initials "EEZ" are added in their place, and the phrase "Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*" is revised to read "Magnuson Act".

§§ 661.2 and 661.3 [Redesignated as §§ 661.3 and 661.2, respectively]

72. Sections 661.2 and 661.3 are redesignated § 661.3 and § 661.2, respectively. In newly redesignated § 661.2, in the definition for *Fishery management area*, the phrase "exclusive economic zone" and the parentheses around "EEZ" are removed. In newly redesignated § 661.3, paragraphs (a) through (e) are redesignated (b) through (f), respectively; in newly redesignated paragraph (e), the reference to "§ 661.3" is revised to read "§ 661.2"; and a new paragraph (a) is added, to read as follows:

§ 661.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b) through (f) of this section.

* * * * *

73. In § 661.5, the section heading is revised; paragraphs (b) introductory text and (b)(9) through (13) are removed; paragraph (a) is redesignated (b) and the third sentence is removed; paragraphs (b)(1) through (8), (15), (18), and (20) are redesignated (a)(1) through (11), respectively; paragraphs (b)(14), (16), (17), and (19) are redesignated (a)(15), (13), (14), and (12), respectively; and new paragraph (a) introductory text is added, to read as follows:

§ 661.5 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

74. Section 662.3 is revised to read as follows:

§ 662.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter.

(b) Any State law which pertains to vessels registered under the laws of that State while fishing in the EEZ and which is consistent with the Federal regulations will continue to have force and effect on fishing activities addressed in this part.

(c) If a vessel has filed with the State of California a declaration of intent to take anchovies for reduction purposes, it will be conclusively presumed that any fishing for anchovies by that vessel is for reduction purposes unless an exemption to the declaration has been filed with the State of California.

§ 662.5 [Amended]

75. In § 662.5, paragraph (c) is removed.

76. In § 662.6, the introductory text and paragraphs (c) through (i) are removed; in paragraphs (a) (3) and (b), the semicolon is removed and a period is added in its place; and new introductory text is added, to read as follows:

§ 662.6 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

§ 663.4 [Amended]

77. In § 663.4, the words "National Marine Fisheries Service" are revised to read "NMFS".

78. In § 663.7, the section heading is revised, the introductory text and paragraphs (a) through (e), (g), (k) and (q) are removed; paragraphs (h), (i), (j), (l), and (m) are redesignated (a) through (e), respectively; paragraph (f) is redesignated (i); paragraphs (n), (o), and (p), are redesignated (f), (g), and (h), respectively; in newly redesignated paragraphs (a) through (i) the word "To" is removed and the following word is capitalized, and the each semicolon and in newly redesignated paragraph (h) the word "or" after the semicolon is removed and a period is added in its place; and new introductory text is added, to read as follows:

§ 663.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

§ 669.1 [Amended]

79. In § 669.1(a), the words "Magnuson Fishery Conservation and Management Act, as amended" and the parenthese are removed; and in paragraph (b), the words "fishery conservation zone (FCZ)" are revised to read "EEZ".

80. In § 669.7, paragraphs (a) introductory text, (a) (12) through (15), (17) through (20), and (b) are removed; paragraphs (a) (1) through (11) and (16) are redesignated (a) through (l), respectively, each semicolon is removed and a period is added in its place; in newly redesignated paragraphs (a), (c), and (e) through (k), the initials "FCZ" are revised to read "EEZ"; and new introductory text is added, to read as follows:

§ 669.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

81. In § 672.3, paragraphs (b) and (c) are removed; paragraph (a) is redesignated (b) and the heading "*Federal law.*" is removed; and a new paragraph (a) is added, to read as follows:

§ 672.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

* * * * *

82. In § 672.7, the introductory text is revised; paragraphs (b) through (f) and (i) are removed; paragraphs (g) and (h) are redesignated (b) and (c), respectively; and in paragraph (a) and newly designated (b) and (c) each

semicolon is removed and a period is added in its place, to read as follows:

§ 672.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

§ 674.1 [Amended]

83. In § 674.1(a) the phrase beginning with the words "and approved" and ending with the words "(the Act)" is revised to read "under the Magnuson Act"; and in paragraph (b), the words "fishery conservation zone (FCZ)" are revised to read "EEZ".

84. Section 674.3 is revised to read as follows:

§ 674.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b), (c), and (d) of this section.

(b) For regulations concerning fishing for groundfish in the Gulf of Alaska, see Part 672 of this chapter.

(c) This Part 674 does not apply to fishing for salmon by vessels other than vessels of the United States conducted under the North Pacific Fisheries Act of 1954, 16 U.S.C. 1021–1035. Part 661 of this chapter concerns fishing for salmon seaward of Washington, Oregon, and California.

(d) This Part 674 will be administered in close coordination with ADF&G's administration of the State of Alaska's regulations governing the salmon troll fishery off Southeast Alaska. Because no commercial fishing for salmon is permitted in the EEZ west of Cape Suckling, all commercial salmon fishing west of Cape Suckling will take place in the territorial sea and be subject to Alaska's management authority.

85. In § 674.7, the introductory text is revised; paragraphs (c) through (i) are removed; in paragraph (a) introductory text and (b), the word "To" is removed and the following word is capitalized, to read as follows:

§ 674.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

§ 675.1 [Amended]

86. In § 675.1(a)(2), the word "Magnuson" is added before the word "Act".

87. Section 675.3 is revised to read as follows:

§ 675.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) For regulations concerning the conservation of halibut, see the regulations of the International Pacific Halibut Commission at Part 301 of this title. For regulations governing fishing for groundfish in the Gulf of Alaksa, see Part 672 of this chapter; and for permits and certificates of inclusion for the taking of marine mammals, see § 216.24 of this title.

88. Section § 675.7 is revised to read as follows:

§ 675.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for groundfish in the Bering Sea and Aleutian Islands management area with a vessel of the United States which does not have aboard a valid permit issued under § 675.4 of this part.

(b) Conduct of any fishing contrary to any notice of inseason adjustment issued under § 675.20(e) of this part.

(c) Until January 1, 1989, it is unlawful for any person to use a vessel to

(1) Conduct any fishing contrary to a notice issued under § 675.21 of this part;

(2) Fish with trawl gear in Area B (Figure 2) unless specifically allowed by the Secretary under § 675.22 of this part;

(3) Fish with trawl gear in Area B at any time when no approved data gathering program exists or after such a program has been terminated; or

(4) Fish with trawl gear in Area B without complying fully with an approved data gathering program.

89. In § 676.5, the section heading is revised, the introductory text and paragraphs (c) through (i) are removed; in paragraphs (a) and (b) each semicolon is removed and a period added in its place; and new introductory text is added, to read as follows:

§ 676.5 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

90. In § 680.7, paragraph (a) introductory text is revised; paragraphs (a)(6) through (13) are removed; and in paragraphs (a)(1), (2)(iv), (4), and (5), the semicolon is removed and a period is added in its place, to read as follows:

§ 680.7 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

§ 680.21 [Amended]

91. In § 680.21(c)(3), the words "(the total allowable level of foreign fishing)" after the acronym "TALFF," are added.

§ 681.1 [Amended]

92. In § 681.1(b), the phrase "exclusive economic zone" and the parentheses around "EEZ" are removed.

93. In § 681.7, paragraph (a) introductory text is revised; paragraphs (a)(4) and (7) through (13) are removed; paragraphs (a)(5) and (6) are redesignated (a)(4) and (5), respectively; and in paragraphs (a), (b)(2)–(5), and (c)(2) and (3) each semicolon, and in paragraph (b)(5) and (c)(3) the word "or" after the semicolon is removed and a period is added in its place, to read as follows:

§ 681.7 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

94. In § 683.6, the section heading and introductory text are revised; paragraphs (a) through (e), (g), and (h) are removed; paragraphs (f), (i), (j), and (k) are redesignated (d), (b), (a), and (c), respectively; and in newly designated paragraphs (b) and (d) each semicolon is removed and a period is added in its place, to read as follows:

§ 683.6 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

95. In § 685.5, paragraphs (a) introductory text, (a)(1) through (5), (7), (8), and (b) are removed; paragraphs (a)(6), (9), and (10) are redesignated (c), (a), and (b), respectively; in newly designated paragraphs (a) and (c) each semicolon and in newly redesignated paragraph (a) the word "or" after the semicolon is removed and a period is added in its place; and new introductory text is added, to read as follows:

§ 685.5 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

96. In addition to the amendments set forth above—

A. The phrases "fishery conservation zone" or "fishery conservation zone (FCZ)" or "U.S. fishery conservation zone (FCZ)" or the initials "FCZ", wherever they appear, are removed and the initials "EEZ" are added in their place in the following places:

§ 630.1(b);
§ 630.4(a);
§ 630.6(a) introductory text;
§ 630.21(a)(3), (4), and (5);
§ 638.1(b);
§ 638.2, in the definition for *Management area;*
§ 638.3(b);
§ 645.1(b);
§ 645.2, in the definition for *Management area;*
§ 645.6(c)(2) and (3);
§ 645.22(a) introductory text;
§ 645.2, in the definition for *Management area;*
§ 655.1(a);
§ 655.2, in the definition for *Joint venture harvest;*
§ 655.23(a);
§ 662.2, in the definition for *PAFA;*
§ 663.1(a);
§ 663.2, in the definition for *Fishery management area;*
§ 669.4;
§ 669.6(a) and (e)(2) and (3);
§ 669.21;
§ 669.23(a), (b), and (d);
§ 669.24(b)(1) and (2);
§ 672.2, in the definitions for *Regulatory area,* introductory text, and *Regulatory district,* paragraphs (1) and (3);
§ 674.2, in the definition for *Mangement area,* paragraphs (a) and (b);
§ 674.5;
§ 675.2, in the definition for *Bering Sea and Aleutian Islands management area,* introductory text, and paragraphs (a) and (b);
§ 680.1(b);
§ 680.25 (a) and (b);
§ 683.2, in the definition for *Fishery management area;* and
§ 683.5 (a)(1), (2), (3), (4), and (5).

§§ 674.2, 674.23 and 675.2 [Amended]

B. In § 674.2 and § 675.2, in the definition for *ADF and G,* and in § 674.23(a)(1) and (b)(2)(ii) and (iii), in the abbreviation "ADF and G", the two spaces and the word "and" are removed and the ampersand "&" is added in their place to read "ADF&G".

§§ 680.1, 681.1 and 683.1 [Amended]

C. In § 680.1(a); in § 681.1(a); and in § 683.1(a); the words "Magnuson Fishery Conservation and Management Act" and the parentheses around the words "Magnuson Act" are removed.

[FR Doc. 88-14198 Filed 6-28-88; 8:45 am]
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Federal Register

Wednesday
June 29, 1988

Part VI

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 653

Red Drum Fishery of the Gulf of Mexico; Final Rule

DEPARTMENT OF COMMERCE

50 CFR Part 653

[Docket No. 80468-8123]

Red Drum Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement Amendment 2 to the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (FMP). This rule sets the total allowable catch (TAC) of red drum in the exclusive economic zone (EEZ) at zero, and makes technical corrections to the specification of the fishing year and to the allowable catch and allocation procedures. The intent of this rule is to protect the red drum spawning stock from overfishing.

EFFECTIVE DATE: This rule is effective 0001 hours, local time, June 29, 1988.

ADDRESS: A copy of Amendment 2, which includes the environmental assessment and regulatory impact review, may be obtained from William R. Turner, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: William R. Turner, 813-893-3722.

SUPPLEMENTARY INFORMATION: The red drum fishery is managed under the FMP and its implementing regulations at 50 CFR Part 653, as provided by the Magnuson Fishery Conservation and Management Act (Magnuson Act). This rule implements Amendment 2 to the FMP.

In accordance with Amendment 1 to the FMP, NMFS' Southeast Fisheries Center prepared an October 1987 stock assessment report. That report concluded that excessively high mortality rates on juvenile red drum have resulted in adult red drum under 12 years of age being poorly represented in the offshore spawning stock. Stock conditions described in that report, analysis of the report, and recommendations stemming from it were discussed in the proposed rule to implement Amendment 2 (53 FR 12790, April 19, 1988) and are not repeated here.

Based on the stock assessment report and recommendations, the Secretary of Commerce (Secretary) implemented an emergency interim rule (53 FR 244, January 6, 1988) that set TAC at zero and prohibited harvest or possession of red drum in or from the primary area of the Gulf of Mexico EEZ from January 1 through March 30, 1988. At the Council's request, the Secretary extended this rule for an additional 90 days, through June 28, 1988 (53 FR 7368, March 8, 1988).

This rule continues the zero TAC and the harvest and possession restrictions implemented by the emergency interim rule. When future stock assessments indicate that red drum harvest in the EEZ, or a portion thereof, may be safely resumed, the Council will amend the FMP to change the TAC and establish allocations. A description of the changes to the FMP and the regulations was contained in the proposed rule and is not repeated here.

Comments and Responses

Summary of Comments

Eight letters were received commenting on the proposed rule. The U.S. Coast Guard, a State Marine Fisheries Commission, and two commenters from the private sector supported the proposed rule.

Three commenters opposed Amendment 2 and the proposed rule, while the Gulf Council objected to the removal of certain language from the existing regulations.

Letters from two commercial fishing organizations and a minority report signed by two Council members objected to eliminating commercial bycatch allowances of red drum in the EEZ. Objection to Amendment 2 and the proposed rule was based upon concerns that elimination of such a small bycatch allowance was not responsive to resource conservation, results in waste and disruption of legitimate fisheries, and does not focus accountability on the source of the problem—overharvest of red drum in State waters.

The same letters also asserted that the amendment does not use the best available scientific information, and that the estimated size of the offshore population even further reduces the urgency to eliminate commercial bycatch allowances that amount to only 300,000 pounds. All three letters encouraged some form of preemptive action that would either close State waters or require the adoption of management programs that would increase juvenile escapement to recommended levels.

Response to Comments

Throughout the process of managing the red drum fishery, the Secretary has favored a conservative approach because of the scarcity of information. Management of this resource was largely uncontemplated until increased consumer demand for "blackened redfish" triggered an upsurge in commercial harvest. Within a short time, red drum landings increased to unprecedented levels and prompted the Secretary to take action to control harvest while gathering information required to make informed judgments regarding the proper management of this important resource.

Elimination of red drum commercial bycatch allowances (and recreational catch allowances, as well) in the EEZ is responsive to the most recent (October 1987) stock assessment report, and in keeping with the conservative management approach advanced by the Secretary. Even though potential allowable total landings of red drum under Amendment 1 amount to only 625,000 pounds, continued fishing on a series of already depressed year classes can only worsen the problem; over a period of years, this could amount to substantial cumulative losses. There is no short-term solution to the resource conditions that exist. The presently depressed year classes (fish under 12 years of age) cannot be restored to former levels. The only solution is long-term rebuilding of the stock of mature red drum by increasing the escapement of juveniles from nearshore waters and strengthening the contribution to successive year classes.

Juvenile red drum occur in inshore and nearshore waters, while adult red drum occur in nearshore and offshore waters. Therefore, the management of red drum is dependent upon the actions of both State and Federal regulatory authorities. Cooperative State/Federal action is being promoted by the Secretary as the most reasonable approach to the management of this valuable shared resource; inaction or inadequate action by either entity will have an adverse impact on the population.

Insofar as Secretarial action is concerned, reducing catch levels to zero in the EEZ is the penultimate step in restricting fishing on red drum, leaving only Federal preemption of State regulatory authority as an additional possible management action. Certain constraints and considerations argue against the use of preemption. First, preemptory authority under the Magnuson Act does not extend into inshore estuarine waters (such as bayous, bays, and sounds) where, according to recreational and commercial catch statistics, the large preponderance of red drum are taken. Second, the Secretary believes that at this time it is neither necessary nor advisable for him to set forth a specific program which the States must implement in order to achieve 30 percent juvenile escapement. The States are

aware of the condition of the resource, have competent scientists and managers at their disposal, and are capable of developing programs that would allow acceptable levels of juvenile escapement. The States have been requested to participate in a cooperative management program and actions by States to date have been positive and encouraging. NOAA will continue to encourage and monitor the States' actions on increasing juvenile escapement. Preempting State authority and dictating the terms of State management programs at this time would only serve to undermine the cooperative State/Federal management approach that the Secretary has promoted.

Undoubtedly, the elimination of red drum harvest in the EEZ will result in some waste and will disrupt other legitimate fisheries. These losses and inconveniences are not unlike those resulting from the closure of any fishery and are simply unavoidable costs associated with the management of a fishery.

Allegations that Amendment 2 was not based upon the best available scientific information largely stem from the release of preliminary assessment data regarding the size of the offshore adult population. Studies to determine the size of the offshore population commenced in 1986 when the Secretary first took emergency action to curtail red drum harvest. It was realized that information on the offshore population would be essential to the formulation of an effective management program, so additional funding was secured to initiate mark-recapture studies and aerial surveys to determine red drum movement and migration, as well as the age, size, and sex composition of the spawning stock. A preliminary analysis of these data indicate an adult standing stock of the magnitude of 123 million pounds. These data will be more thoroughly evaluated and the results will form the nucleus of the next annual red drum stock assessment that, by the terms of the FMP, is prepared for the Council each October. A point estimate of 123 million pounds, in itself, does not indicate the size of the offshore stock prior to the sudden increases in harvest, but does serve as a point of departure for measuring further changes in population size. (NMFS' fishery scientists have indicated that the 123-million-pound estimate is equivalent to about one-half of the offshore standing stock prior to 1980.) The magnitude of the offshore population, however, does not diminish either the reasonableness or the urgency of presently eliminating commercial bycatch allowances or limited recreational quotas, as that action is based upon the risk of further reducing the severely depressed year classes

The Council objected to removal of § 653.3(d), recently redesignated § 653.3(c), which requires, "A person landing red drum from the recreational fishery or from a commercial fishery, other than a directed red drum fishery, must comply with the landing and possession laws of the State where landed." This section refers only to fisheries conducted in the EEZ. The Council's objection is based on concern that elimination of this lanaguage will remove an important element in the management strategy for red drum, specifically, that cooperative State/Federal programs are essential. The Council originally included the quoted language so that State restoration efforts would not be circumvented. During the period that no harvest of red drum is allowed, that language is not applicable. Nevertheless, in response to the Council's objection, it is being retained and revised to make it clear that, at such time as a TAC is specified, the landing and possession laws of the State where landed will apply to a person landing red drum, other than from a directed commercial red drum fishery.

Changes from the Proposed Rule

The definitions for *Commercial fishing (fishery)* and *Directed commecial red drum fishing (fishery)* are not removed in this final rule. As noted above, § 653.3(d) has been redesignated § 653.3(c); it is revised in lieu of being removed. Because several of the prohibitions listed in § 653.7 have been removed by a recently published final rule, technical amendment, that consolidates into a new 50 CFR Part 620 those regulations common to all domestic fisheries, the prohibition that appeared in the proposed rule at § 653.7(a)(4) is redesignated § 653.7(g). Other minor editorial and technical corrections are made to the rule as proposed.

Classification

The Secretary determined that Amendment 2 is necessary for the conservation and management of the red drum fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for Amendment 2 describing the impact on the environment as a result of this rule. Based upon the EA, the Assistant Administrator for Fisheries has determined that there will be no significant impact on the human environment. A copy of the EA is available (see **ADDRESS**).

The Under Secretary, NOAA, determined that this rule is not a "major rule" requiring the preparation of a regulatory impact analysis under Executive Order 12291. The Council prepared a regulatory impact review (RIR) on this rule. A summary of the economic effects was included in the proposed rule and is not repeated here. A copy of the RIR is available (see **ADDRESS**).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. A summary of effects was included in the proposed rule and is not repeated here. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act. The collection-of-information requirements formerly applicable to commercial vessels that take red drum as incidental catch are removed by this rule. The collection-of-information requirements of the FMP that remain in effect were approved under OMB Control Number 0648–0177.

The Assistant Administrator for Fisheries, NOAA, determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Florida, Alabama, Mississippi, and Louisiana. Texas does not have an approved coastal zone management program. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. Louisiana and Mississippi agreed with this determination. Alabama and Florida failed to comment within the statutory time period; therefore, consistency is automatically implied.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The Assistant Administrator for Fisheries, NOAA, finds that it would be contrary to the public interest in effective management of the red drum resource to delay for 30 days the effective date of this rule. The emergency interim rule which is in effect through June 28, 1988, currently provides necessary conservation measures for red drum. To continue those

conservation measures without interruption, it is necessary that this rule become effective on June 29, 1988. In addition, no premature change in fishing practice will be caused by advancing the effective date of this final rule, because it merely continues restrictions which are already in effect under the emergency rule.

List of Subjects in 50 CFR Part 653

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 22, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 653 is amended as follows:

PART 653—RED DRUM FISHERY OF THE GULF OF MEXICO

1. The authority citation for Part 653 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 653.2, the definitions for *Recreational fishing (fishery)*, and *Trip* are removed; and new definitions for *Overfishing* and *Spawning stock biomass per recruit (SSBR) ratio* are added in alphabetical order to read as follows:

§ 653.2 Definitions.

* * * * *

Overfishing means a fishing mortality rate that prohibits attaining the spawning stock goal or threshold, which is established at a 20 percent spawing stock biomass per recruit (SSBR) ratio.

* * * * *

Spawning stock biomass per recruit (SSBR) ratio is an index of the impact of fishing mortality on the lifetime reproductive potential of recruits to the population. With no fishing mortality, the SSBR is 100 percent. Combinations of fishing mortality and the average age at which a year class becomes subject to exploitation in the fishery give rise to lower levels of SSBR, all of which can be expressed as percentages of the maximum.

* * * * *

3. In § 653.3, paragraph (c) is revised to read as follows:

§ 653.3 Relation to other laws.

* * * * *

(c) At such time as a TAC is specified, a person landing red drum, other than from a directed commercial red drum fishery, must comply with the landing and possession laws of the State where landed.

* * * * *

§ 653.4 [Reserved]

4. In § 653.4, the text is removed and the section heading is reserved.

5. In § 653.5, paragraphs (a), (b), (c)(4), (c)(5), (d), (f), and (g) are removed; paragraphs (c) and (e) are redesignated (a) and (b), respectively; in newly redesignated paragraph (a)(2), the word "and" is added after the semicolon; and newly redesignated paragraph (a)(3) is revised, to read as follows:

§ 653.5 Reporting requirements.

(a) * * *

(3) Total poundage of red drum received during the reporting period, by each type of gear used for harvest.

* * * * *

6. In § 653.7, paragraphs (b), (c), (d), and (h) through (m) are removed; paragraphs (e), (f), (g), and (n) are redesignated (b) through (e), respectively; in paragraph (a) and in newly redesignated paragraphs (b) and (c), the references to "§ 653.22(c)", "§ 653.4 and § 653.5", and "§ 653.5(e)" are revised to read "§ 653.22(b)", "§ 653.5(a)", and § 653.5(b)", respectively; and newly redesignated paragraph (d) is revised, to read as follows:

§ 653.7 Prohibitions.

* * * * *

(d) Retain on board a vessel or possess red drum in or from the secondary or primary areas of the EEZ as specified in § 653.22(a).

* * * * *

7. Section 653.20 is revised to read as follows:

§ 653.20 Fishing year.

The fishing year for red drum begins on January 1 and ends on December 31.

8. Section 653.21 is revised to read as follows:

§ 653.21 Quotas.

TAC is zero for each fishing year.

9. In § 653.22, paragraph (a) is revised; paragraphs (b), (d), and (e) are removed; and paragraph (c) is redesignated (b), to read as follows:

§ 653.22 Harvest and landing limitations.

(a) *Harvest from the EEZ.* No red drum may be harvested or possessed in or from the secondary or primary areas of the EEZ. Red drum caught in the EEZ must be released immediately with a minimum of harm.

* * * * *

§ 653.23 [Reserved]

10. In § 653.23, the text is removed and the section heading is reserved.

11. In § 653.24, paragraph (a)(4) is revised; in paragraph (b)(1), the words "through fishing" are removed; and paragraphs (b)(2), (3), and (4) are revised, to read as follows:

§ 653.24 Allowable catch and allocation procedures.

(a) * * *

(4) Re-examine the spawning stock requirements (established as a spawning stock goal or threshold of a 20-percent SSBR ratio in relation to an unfished stock) and specify escapement levels of juvenile fish necessary to achieve these requirements;

* * * * *

(b) * * *

(2) Include consideration of fishing mortality rates, abundance relative to the established spawning stock goal or threshold, trends in recruitment, and whether overfishing is occurring;

(3) In specifying ABC, separately identify the quantity of the offshore population, in excess of the spawning stock goal or threshold, that may be harvested;

(4) When requested by the Council, include information on the levels of bag limits, size limits, specific gear harvest limits, and other restrictions required to attain the necessary escapement goal or prevent a user group from exceeding its allocation or quota under a TAC specified by the Council and on the economic and social impacts of such limits and restrictions.

* * * * *

PART 653, APPENDIX—[REMOVED]

12. The Appendix to Part 653 is removed.

[FR Doc. 88-14559 Filed 6-28-88; 8:45 am]

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Federal Register

Wednesday
June 29, 1988

Part VII

Environmental Protection Agency

21 CFR Parts 193 and 561
40 CFR Parts 185 and 186
Tolerances for Pesticides in Food and Animal Feeds; Transfer of Regulations; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[OPP-00263; FRL 3407-4]

Tolerances for Pesticides in Food and Animal Feeds; Transfer of Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under authority of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*), EPA is transferring its regulations in Parts 193 and 561 of Chapter I of Title 21 of the Code of Federal Regulations (CFR) to new Parts 185 and 186 of Chapter I of Title 40 of the CFR. EPA is taking this action to establish an orderly development of informative pesticide regulations coordinated and consolidated under Title 40 of the CFR. This document is a technical instrument for transfer of existing regulations. No new regulations are being initiated in this document, and advance notice and public comment are unnecessary.

EFFECTIVE DATE: June 29, 1988.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Chief, Federal Register Staff (TS-788B), Office of Pesticides and Toxic Substance, Environmental Protection Agency, Rm. NE G-009, 401 M Street SW., Washington, DC 20460, (202)-382-2253.

SUPPLEMENTARY INFORMATION: EPA administers regulations in 21 CFR Part 193—Tolerances for Pesticides in Food Administered by the Environmental Protection Agency and 21 CFR Part 561—Tolerances for Pesticides in Animal Feeds Administered by the Environmental Protection Agency. EPA is recodifying and consolidating these regulations in Title 40—Protection of the Environment, under Chapter I—Environmental Protection Agency, to provide orderly development and consolidation of these pesticide regulations.

Elsewhere in this issue of the **Federal Register**, EPA is issuing a final document [OPP-00264] that sets out the reorganized and recodified regulations formerly in 21 CFR Parts 193 and 561 in 40 CFR in new Parts 185 and 186, respectively.

Therefore, the regulations in Parts 193 and 561 of Chapter I of Title 21 of the Code of Federal Regulations are hereby transferred to Chapter I of Title 40 and redesignated as Parts 185 and 186 of that chapter. Accordingly, the sections so affected in Parts 193 and 561 are hereby vacated. (7 U.S.C. 136 *et seq.)*

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Animal feeds, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 24, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

PARTS 193 AND 561 [REDESIGNATED AS 40 CFR PARTS 193 AND 561]

Therefore, the regulations in Parts 193 and 561 of Chapter I of Title 21 of the Code of Federal Regulations are hereby transferred to Chapter I of Title 40 and redesignated as Parts 185 and 186 of that chapter. Accordingly, the sections so affected in Parts 193 and 561 are hereby vacated, and Parts 193 and 561 are removed.

[FR Doc. 88-14717 Filed 6-28-88; 8:45 am]

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40 CFR Parts 185 and 186

[OPP-00264; FRL 3407-5]

Tolerances for Pesticides in Food and Animal Feeds; Transfer of Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under authority of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*), EPA is transferring its regulations in Parts 193 and 561 of Chapter I of Title 21 of the Code of Federal Regulations (CFR) to new Parts 185 and 186 of Chapter I of Title 40 of the CFR. EPA is taking this action to establish an orderly development of informative pesticide regulations coordinated and consolidated under Title 40 of the CFR. This document recodifies existing regulations. No new regulations are being initiated in this document, and advance notice and public comment are unnecessary.

EFFECTIVE DATE: June 29, 1988.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Chief, Federal Register Staff (TS-788B), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE G-009, 401 M Street SW., Washington, DC 20460, (202)-382-2253.

SUPPLEMENTARY INFORMATION: EPA administers regulations in 21 CFR Part 193—Tolerances for Pesticides in Food Administered by the Environmental Protection Agency and 21 CFR Part 561—Tolerances for Pesticides in Animal Feeds Administered by the Environmental Protection Agency. In this document, EPA is recodifying and consolidating these regulations in Title 40—Protection of the Environment, under Chapter I—Environmental Protection Agency, to provide orderly development and consolidation of these pesticide regulations.

Elsewhere in this issue of the **Federal Register**, EPA is issuing a final rule document (OPP-00263) that vacates 21 CFR Parts 193 and 561.

The changes being made are nonsubstantive, and for this reason advance notice and public procedure are not prerequisites to this publication.

The following table shows the relationship of the regulations under their assigned section numbers in 21 CFR Parts 193 and 561 prior to this publication, and their redesignations are reflected in new Parts 185 and 186 under 40 CFR.

Old section	New section
193.10	185.100
193.15	185.150
193.20	185.200
193.25	185.250
193.30	185.350
193.40	185.500
193.43	185.600
193.45	185.650
193.50	185.700
193.60	185.750
193.65	185.1150
193.80	185.375
193.83	185.800
193.85	185.1000
193.90	185.1200
193.97	185.1300
193.98	185.1250
193.99	185.3300
193.100	185.1450
193.105	185.1500
193.130	185.1650
193.135	185.1700
193.137	185.1850
193.140	185.1900
193.142	185.1750
193.150	185.2225
193.151	185.2250
193.152	185.2150
193.156	185.2200
193.160	185.2500
193.170	185.2600
193.180	185.2650
193.186	185.2700
193.190	185.2750
193.200	185.2850
193.210	185.2900
193.212	185.3000
193.220	185.3450
193.225	185.3475
193.230	185.3480
193.235	185.3500
193.236	185.3350
193.240	185.3600
193.250	185.3700
193.251	185.425
193.253	185.3750
193.255	185.3800
193.260	185.3850
193.270	185.3900
193.275	185.3950
193.277	185.4000

Old section	New section
193.280	185.4025
193.285	185.4150
193.290	185.4200
193.300	185.4250
193.310	185.4300
193.320	185.4500
193.323	185.4400
193.324	185.4450
193.325	185.4600
193.330	185.4650
193.331	185.4700
193.340	185.4800
193.350	185.4850
193.360	185.4900
193.370	185.5000
193.375	185.5100
193.380	185.5150
193.390	185.5200
193.400	185.5350
193.410	185.1550
193.418	185.5450
193.420	185.5475
193.430	185.1350
193.440	185.5900
193.450	185.5750
193.460	185.6300
193.462	185.4550
193.463	185.2950
193.464	185.5300
193.465	185.1800
193.466	185.3250
193.467	185.3650
193.468	185.4950
193.470	185.5500
193.471	185.1050
193.472	185.1100
193.473	185.300
193.475	185.4100
193.476	185.5950
193.477	185.4350
193.479	185.2800
193.480	185.2275
193.481	185.5250
193.520	185.7000
561.20	186.100
561.30	186.150
561.40	186.200
561.41	186.250
561.50	186.350
561.51	186.400
561.53	186.5050
561.60	186.450
561.65	186.500
561.66	186.550
561.67	186.600
561.70	186.700
561.80	186.750
561.91	186.950
561.92	186.425
561.93	186.800
561.95	186.850
561.96	186.1250
561.97	186.1300
561.98	186.1000
561.99	186.1400
561.100	186.1450
561.110	186.1500
561.130	186.1600
561.140	186.1650
561.145	186.1700
561.150	186.1875
561.160	186.1950
561.170	186.2100
561.180	186.2225
561.190	186.2325
561.191	186.2150
561.197	186.2275
561.200	186.2400
561.210	186.2450
561.215	186.2500
561.220	186.2550
561.225	186.2700
561.230	186.2750
561.232	186.2950
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561.234	186.3050
561.235	186.2775
561.240	186.3350
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561.255	186.3550
561.260	186.3700
561.263	186.3750
561.268	186.3800
561.270	186.3850
561.273	186.4000
561.280	186.4050
561.282	186.4150
561.283	186.4450
561.285	186.4575
561.289	186.4700
561.290	186.4750
561.300	186.4800
561.305	186.4850
561.310	186.4900
561.330	186.5000
561.340	186.5200
561.350	186.5350
561.360	186.1550
561.365	186.5400
561.380	186.5550
561.385	186.5600
561.386	186.5650
561.387	186.5700
561.390	186.5800
561.400	186.1350
561.410	186.6300
561.415	186.1750
561.420	186.2000
561.425	186.2050
561.427	186.1800
561.428	186.3250
561.429	186.3650
561.430	186.2800
561.432	186.4950
561.434	186.5100
561.435	186.3300
561.436	186.3400
561.437	186.1050
561.438	186.3200
561.439	186.1100
561.440	186.1850
561.441	186.300
561.442	186.5950
561.443	186.4350
561.444	186.5850
561.445	186.5250

List of Subjects in 40 CFR Parts 185 and 186

Food additives, Animal feeds, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 24, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

1. In Part 185:

a. New Part 185, as transferred and recodified from 21 CFR Part 193, is established, and the table of contents is added to read as follows:

PART 185—TOLERANCES FOR PESTICIDES IN FOOD

Subpart A—[Reserved]

Subpart B—Food Additives Permitted in Food for Human Consumption

Sec.

Authority: 21 U.S.C. 348.

b. New §§ 185.100 through 185.6300 in Subpart B and new § 185.7000 in Subpart C are added as transferred and recodified from former 21 CFR Part 193 as indicated in the table in the preamble of this document above, and all authority citations at the end of each individual section are removed and the authority citation for the part is revised to read as set forth above.

§ 185.1900 [Amended]

c. In § 185.1900 *2,2-Dichlorovinyl dimethyl phosphate* (former 21 CFR 193.140), the reference in the first sentence of the text to "§ 170.3(j)" is amended to read "21 CFR 170.3(j)" to reflect the redesignation accomplished by paragraph 1.b. above.

§ 185.2500 [Amended]

d. In § 185.2500 *Diquat* (former 21 CFR 193.160), the reference in paragraph (b) to "§ 193.160(b)" is amended to read "§ 185.2500(b)" to reflect the redesignation accomplished by paragraph 1.b. above.

§ 185.2850 [Amended]

e. In § 185.2850 *Ethylene oxide* (former 21 CFR 193.200), the reference in paragraph (a) to "§ 173.355 of this chapter" is amended to read "21 CFR 173.355" to reflect the redesignation accomplished by paragraph 1.b. above.

§ 185.3700 [Amended]

f. In § 185.3700 *Inorganic bromide* (former 21 CFR 193.250), the reference in paragraph (c) to "§ 193.230" is amended to read "§ 185.3480" and the reference to "§ 172.730(a)(2) of this chapter" is amended to read "21 CFR 172.730(a)(2)" to reflect the redesignation accomplished by paragraph 1.b. above.

§ 185.5200 [Amended]

g. In § 185.5200 *Pyrethrins* (former 21 CFR 193.390), the references in paragraphs (b) and (c)(3) to "§ 193.320" are amended to read "§ 185.4500" to reflect the redesignation accomplished by paragraph 1.b. above.

§ 185.7000 [Amended]

h. In § 185.7000 *Malathion* (former 21 CFR 193.520), the reference in the text to § 193.260 is amended to read "§ 185.3850" to reflect the redesignation accomplished by paragraph 1.b. above.

2. In Part 186:

a. New Part 186, as transferred and recodified from 21 CFR Part 561, is established, and the table of contents is added, to read as follows:

PART 186—TOLERANCES FOR PESTICIDES IN ANIMAL FEEDS

Subpart A—[Reserved]

Subpart B—Feed Additives Permitted in Animal Feed

Sec.
186.3000 *O*-Ethyl *O*-[4-(methylthio)phenyl] *S*-propyl phosphorodithioate.
186.3050 *S*-[2-(Ethylsulfinyl)ethyl] *O,O*-dimethyl phosphorothioate.
186.3200 Fenarimol.
186.3250 Fluazifop-butyl.
186.3300 Flucythrinate.
186.3350 Fluometuron.
186.3400 (alpha *RS,2R*)-Fluvalinate [(*RS*)-alpha-cyano-3-phenoxbenzyl(*R*)-2-[2-chloro-4-(trifluoromethyl) anilino]-3-methylbutanoate].
186.3450 Formetanate hydrochloride.
186.3500 Glyphosate.
186.3550 Hexakis (2-methyl-2-phenylpropyl)distannoxane.
186.3650 Imazalil.
186.3700 Inorganic bromides.
186.3750 Iprodione.
186.3800 Magnesium phosphide.
186.3850 Malathion.
186.4000 Metalaxyl.
186.4050 Methanearsonic acid.
186.4150 Methoprene.
186.4350 Myclobutanil.
186.4450 Norflurazon.
186.4575 Oxamyl.
186.4700 Paraquat.
186.4750 Phorate.
186.4800 Phosalone.
186.4850 Picloram.
186.4900 Piperonyl butoxide.
186.4950 Pirimiphos-methyl
186.5000 Propargite.
186.5050 Propenofos.
186.5100 Propetamphos.
186.5200 Pyrethrins.
186.5250 Quizalofop-ethyl.
186.5350 Simazine.
186.5400 Synthetic isoparaffinic petroleum hydrocarbons.
186.5550 Thiabendazole.
186.5600 Thidiazuron.
186.5650 Thiodicarb.
186.5700 Thiophanate-methyl:
186.5800 *S,S,S*-Tributyl phosphorotrithioate.
186.5850 Triflumizole.
186.5950 Triforine.
186.6300 Zinc ion and maneb coordination product.

Authority: 21 U.S.C. 348.

b. New §§ 186.100 through 186.6300 are added in Subpart B as transferred and recodified from former sections in CFR Part 561 as indicated in the table in the preamble of this document above, and all authority citations at the end of each individual section are removed and the authority citation for the part is revised to read as set forth above.

§ 186.5400 [Amended]

c. In § 186.5400 *Synthetic isoparaffinic petroleum hydrocarbons* (former 21 CFR 561.365), the reference in the text to "§ 172.882(a) and (b)" is amended to read "21 CFR 172.882(a) and (b)" to reflect the redesignation accomplished by paragraph 2.b. above.

[FR Doc. 88-14718 Filed 6-28-88; 8:45 am]
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H.R. 4448/Pub. L. 100-345

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S. 794/Pub. L. 100-346

To amend chapter 13 of title 18, United States Code, to impose criminal penalties for damage to religious property and for obstruction of persons in the free exercise of religious beliefs. (June 24, 1988; 102 Stat. 644; 2 pages) Price: $1.00

H.R. 1212/Pub. L. 100-347

Employee Polygraph Protection Act of 1988. (June 27, 1988; 102 Stat. 646; 8 pages) Price $1.00

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